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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Report of the Joint Committee on the Bill further to amend the Code of Civil Procedure, 1908, and the Limitation Act, 1963, was presented to Lok Sabha on the 1st April, 1976.

COMPOSITION OF THE COMMITTEE

Shri L. D. Kotoki—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. V. Bade
3. Shri T. Balakrishniah
4. Shri Narendra Singh Bisht
5. Shri Chandrika Prasad
6. Shri A. M. Chellachami
7. Shri M. C. Daga
*8. Shri Tulsidas Dasappa
9. Sardar Mohinder Singh Gill
10. Shri H. R. Gokhale
11. Shri Dinesh Joarder
12. Shri B. R. Kavade
13. Shrimati T. Lakshmikanthamma

*Appointed w.e.f. 2-12-74 *vice* Shri Prabhudas Patel resigned.

$14. Shri Madhu Limaye
15. Shri V. Mayavan
16. Shri Mohammad Tahir
17. Shri Surendra Mohanty
18. Shri Noorul Huda
19. Shri D. K. Panda
20. Shri K. Pradhani
21. Shri Rajdeo Singh
22. Shri M. Satyanarayan Rao
23. Shrimati Savitri Shyam
24. Shri R N. Sharma
25. Shri Satyendra Narayan Sinha
26. Shri T. Sohan Lal
27. Shri Sidrameshwar Swamy
£28. Shri C. M. Stephan
29. Shri R. G. Tiwari
**30. Dr. (Smt.) Saropini Mahishi

Rajya Sabha

31. Shri Sardar Amjad Ali
@32. Shri Mohammad Usman Arif
33. Shri Bir Chandra Deb Barman
34. Shri Krishnarao Narayan Dhulap
35. Shri Kanchi Kalyanasundaram
%36. Shri B. P. Nagaraja Murthy
37. Shri Syed Nizam-ud-din
38. Shri D. Y. Pawar
39. Shri V. C. Kesava Rao
40. Shri Virendra Kumar Sakhalecha
41. Shri Dwijendralal Sen Gupta
42. Shri M. P. Shukla
43. Shri Awadheshwar Prasad Sinha
44. Shri D. P. Singh
45. Shri Sawaisingh Sisodia

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. K. Maitra—*Joint Secretary and Legislative Counsel.*

SECRETARIAT

1. Shri P. K. Patnaik, *Additional Secretary.*
2. Shri Y. Sahai, *Chief Legislative Committee Officer.*

$Resigned his seat in Lok Sabha w.e.f. 22-3-76.
£Appointed w.e.f. 20-3-75 *vice* Shri Devendra Nath Mahata died.
**Appointed w.e.f. 19-12-74 *vice* Shri Nitiraj Singh Chaudhary resigned.
@Appointed w.e.f. 11-12-74 *vice* Shri Bipinpal Das resigned.
%Appointed w.e.f. 14-5-75 *vice* Shri Nawal Kishore died.

REPORT OF THE JOINT COMMITTEE

I, the Chairman of the Joint Committee to which the Bill* further to amend the Code of Civil Procedure, 1908, and the Limitation Act, 1963 was referred, having been authorised to submit the Report on their behalf, present their Report, with the Bill, as amended by the Committee annexed thereto.

2. The Bill was introduced in Lok Sabha on the 8th April, 1974. The motion for reference of the Bill to a Joint Committee of the Houses was moved in Lok Sabha by Shri Nitiraj Singh Choudhary, the then Minister of State in the Ministry of Law, Justice & Company Affairs on the 2nd May, 1974 and was adopted.

3. Rajya Sabha concured in the said motion on the 14th May, 1974.

4. The message from Rajya Sabha was published in Lok Sabha Bulletin—Part II on the 15th May, 1974.

5. The Committee held 51 sittings in all.

6. The first sitting of the Committee was held on the 12th June, 1974 to draw up their programme of work. The Committee decided to invite written memorandum from the Registrars of Supreme Court/High Courts, Bar Council of India|State Bar Councils, Supreme Court Bar Association|High Court Bar Associations, other associations and organisations and everyone else interested in the subject matter of the Bill. The Committee also decided to issue a Press Communique in this behalf fixing 30th June, 1974 as the last date for receipt of memoranda. The Committee further decided that the Chief Secretaries of all State Governments/Union territories might be asked to bring to the notice of various Bar Councils and Bar Associations both at the State and District levels, the contents of the Press Communique.

The Committe also decided to hear oral evidence on the provisions of the Bill.

7. At their second sitting held on the 3rd July, 1974, the Committee decided to extend the time for submission of memoranda to the Committee upto the 31st July, 1974, and authorised the Lok Sabha Secretariat to issue a Press Communique in this behalf. The Press Communique was accordingly issued in this regard on the 4th July, 1974.

8. 77 memoranda on the Bill were received by the Committee from various Associations, Organisations, etc.

9. At their third sitting held on the 4th July, 1974, the Committee decided that, for the purpose of preparing a questionnaire on the provisions of the Bill, members might send their comments/suggestions in

*Published in the Gazette of India, Extraordinary, Part II, Section 2, dated the 8th April, 1974.

the form of questions to the Lok Sabha Secretariat. The Committee, at their sitting held on the 30th August, 1974 approved the questionnaire on the provisions of th Bill.

Replies to the questionnaire were received by the Committee from 36 Associations, Organisations, Individuals, etc.

10. At their sitting held on the 2nd August, 1974, the Committee decided that while the whole Committee will take evidence of the representatives of various Associations, Organisations, etc. at the sittings to be held at New Delhi and, in the case of sittings to be held outside Delhi for the purpose of taking evidence, the Committee would divide themselves into three sub-Committees for this purpose. The sub-Committees held their sittings at different places as per details given below:—

(i) Sub-Committee 'A' at Madras from the 16th to 18th September and at Bangalore from the 19th to 21st September, 1974.

(ii) Sub-Committee 'B' at Ahmedabad from the 7th to 9th October and at Bombay from the 10th to 12th October, 1974.

(iii) Sub-Committee 'C' at Calcutta on the 30th and 31st December, 1974 and the 1st January, 1975 and at Bhubaneswar on the 2nd and 3rd January, 1975.

At their sitting held on the 22nd November, 1974, the Committee decided to divide themselves into two sub-Committees, instead of three sub-Committees, for the purpose of hearing oral evidence at the sittings to be held outside Delhi. The following two sub-Committees held their sittings at different places as per details given below:—

(i) Sub-Committee I at Gauhati on the 9th, 10th and 13th January, 1975 and at Shillong on the 11th January, 1975.

(ii) Sub-Committee II at Lucknow on the 17th and 18th January, 1975 and at Chandigarh on the 29th and 30th May, 1975.

11. The Committee also heard oral evidence tendered by the representatives of various Associations, Organisations, individuals, etc. at their sittings held at New Delhi on the 31st October, 1st and 2nd November, 1974, from the 27th to 29th January, 10th and 11th February and from the 16th to 18th June, 1975.

12. The Committee held general discussion on the various points raised in the memoranda submitted to the Committee and also made during the course of evidence tendered before the Committee and sub-Committees *vis-a-vis* provisions of the Bill at their sittings held during the period from the 1st July to 21st November and also on the 16th December, 1975.

13. At their sitting held on the 2nd July, 1975, the Committee decided that (i) the evidence tendered before them might be laid on the Tables of both the Houses; and (ii) two copies each of the memoranda received by the Committee from various Associations, Organisations, etc. might be placed in the Parliament Library, after the Report is presented, for reference by the Member of Parliament.

14. The Report of the Committee was to be presented by the 20th December, 1974. The Committee were granted three extensions of time. The first extension was granted on the 11th December, 1974, upto the 25th July, 1975; and the second extension, on the 25th July, 1975, upto the 6th February, 1976, and the third extension, on the 28th January, 1976, upto the last day of the Budget Session, 1976.

15. The Committee considered the Bill clause-by-clause at their sittings held from the 2nd to 5th, 17th and 26th December, 1975 and from the 16th to 18th, 26th and 27th February and on the 1st and 2nd March, 1976.

16. The Committee considered and adopted the Report at their sitting held on the 25th March, 1976.

17. The observations of the Committee with regard to principal changes proposed in the Bill are detailed in the succeeding paragraphs.

18. *Clause* 2.—(i) The Committee feel that the scheduled areas comprising the East Godavari, West Godavari and Visakhapatnam Agencies in the State of Andhra Pradesh, which have been excluded from the operation of the Code should also be brought within the purview of the Code. Clause (b) together with proviso of the proposed sub-section (3) has been omitted accordingly.

(ii) The Committee note that the Code does not extend to the tribal areas of Assam. But in the Explanation to clause (c) of the proposed sub-section (3), the expression "tribal areas" has been so defined as to exclude the areas within the local limits of the Municipality of Shillong. During the course of evidence, the Committee were informed that only three wards of the Shillong Municipality were outside the tribal areas and the rest were within the tribal areas. The Committee feel that, in the circumstances, the words "other than those within the local limits of the Municipality of Shillong" should be omitted, so that there may not be any distinction between the different areas within the Municipality of Shillong.

(iii) The Committee note that the Code extends to the Union territory of Lakshadweep subject to the Regulations in force in that area relating to the application of the Code. The Committee feel that the same provision should also be made applicable to the scheduled areas comprising East Godavari, West Godavari and Visakhapatnam Agencies to which the Code is being extended. A new sub-section (4) in place of clause (d) of the proposed sub-section (3) has been substituted accordingly.

19. *Clause* 3.—(i) The Committee note that according to the definition of the expression "decree", given in the Code, the determination of any question under section 47 amounts to a decree and, as such, an appeal and second appeal would lie against such determination. The Committee are of the view that this provision of the Code is mainly responsible for the delay in the execution of decrees. The Committee, therefore, feel that the definition of the term "decree" should be amended so that the determination of question under section 47 may not amount to a decree.

(ii) The Committee also feel that the amendment proposed in the definition of the expression "decree" with a view to removing the distinction between a preliminary decree an da final decree is not desirable.

The Committee, are, therefore, of the view that *status quo ante* should be maintained. Clause 3 of the Bill has been amended accordingly.

20. *Clause 6.*—The Committee feel that the words "so far as may be" used in the proposed new section 11A are likely to lead to a doubt as to the amplitude of the principles of *res judicata* which would be applicable to a proceeding in execution. The Committee were informed that it had already been held by the Privy Council as well as the Supreme Court that the principles of constructive *res judicata* apply to the proceedings in execution. The Committee, therefore, feel that, instead of inserting new section 11A, section 11 should be so amended as to ensure that the principles of *res judicata* may apply, in its full amplitude, to a proceeding in execution. A new explanation has, therefore, been inserted in section 11 of the Code.

The Committee also feel that clause (b) of new section 11A, which proposes to extend the principles of *res judicata* to every civil proceeding other than a suit, is too wide and may have the effect of extending the principles of *res judicata* to proceedings which are not judicial proceedings. Having regard to the amendment proposed by the Committee to section 11 of the Code and having regard to the difficulty which may arise if clause (b) of new section 11A is accepted, the Committee decided to omit new section 11A.

The Committee were informed that the Law Commission had made certain recommendations with a view to ensuring that the principles of *res judicata* might apply to cases which were triable by courts of limited jurisdiction. After careful consideration of the matter, the Committee are of the view that the decisions of the courts of limited jurisdiction should, in so far as such decisions are within the competence of the courts of limited jurisdiction, operate as *res judicata* in a subsequent suit although the court of limited jurisdiction may not be competent to try such subsequent suit or the suit in which such question is subsequently raised. A new Explanation to section 11 of the Code has been inserted accordingly.

21. *Clause* 7.—(i) The Committee are of the opinion that a corporation, for the purpose of instituting a suit in respect of any cause of action arising at any place where it has a subordinate office, should be deemed to carry on business at such place also. The Committee, therefore, feel that the provision made in existing Explanation II of the Code is more appropriate than the provision made in the proposed Explanation I of this clause.

Explanation II, as it now exists in the Code has, therefore, been retained in place of the proposed Explanation I sought to be substituted by this clause.

(ii) The Committee note that the provision contained in Explanation II as proposed to be inserted by the Bill, contradicts the basic provision made in the section which provides that the suit should be instituted at the place where the defendant (and not the plaintiff) voluntarily resides or carries on business or personally works for gain. Besides, such a provision would, in the opinion of the Committee, put poor and indigent debtors to great difficulties. Proposed Explanation II as proposed to be inserted by this clause has, therefore, been omitted.

22. *Clause* 9.—The amendment made in this clause is of a drafting nature.

23. *Original clause* 11.—The Committee note that the proposed new section 24A provides for the transfer of a suit from a court of limited jurisdiction to a court of appropriate jurisdiction so that the decision in the suit may operate as *res judicata*. The Committee feel that in view of the amendment proposed by the Committee to section 11 of the Code, the provisions contained in this clause are not necessary. The clause has, therefore, been omitted.

24. *Clause* 12 (*Original clause* 13).—When a summons is sent out for service to a court outside the State, the record of service of the summons is usually in the court language of that State. If the language of the court by which such summons is served is not also the language of the court by which the summons was issued, it may be difficult for the court trying the suit to conclude whether the summons has or has not been duly served. In the circumstances, the Committee feel that it should also be made obligatory on the part of the court returning the summons to the court of issue to send the translation of the record of the proceedings relating to the service of the summons, in Hindi or English, where the language of such record of proceedings is other than Hindi or English. Clause (b) of proposed sub-section (3) of this clause has been amended accordingly.

25. *Clause* 13 (*Original clause* 14).—(i) The Committee note that the clause seeks to increase the post-decretal interest in relation to a liability arising out of a commercial transaction if the principal sum adjudged exceeds rupees ten thousand. The Committee feel that limiting the amount of principal sum for the purpose of increased rate of interest is not desirable as it is likely to cause hardship to decree-holders of lesser amounts under the same conditions. The proposed new proviso in this clause has, therefore, been amended accordingly.

(ii) The Committee also feel that the expression "commercial transaction" is likely to be interpreted differently and should, therefore, be defined to mean a transaction connected with the industry, trade or business of the party incurring the liability. A new Explanation has been added to the clause accordingly.

26. *Clause* 14 (*Original clause* 15).—The Committee feel that the ceiling of two thousand rupees provided for the payment of compensatory costs in respect of false or vexatious claims or defences is too low and that it should be increased to three thousand rupees. Sub-clause (ii) of this clause has, therefore, been amended accordingly.

27. *Clause* 15 (*Original clause* 16).—The Committee are of the opinion that in order to avoid delay in the disposal of suits, payment of compensatory costs for causing delay should be a condition precedent to the further prosecution of the suit or the defence by the plaintiff or defendant concerned. The clause has been amended accordingly.

28. *Clause* 21 (*Original clause* 22).—The Committee are of the view that the insertion of the expression "without lawful excuse" in clause (a) (i) and clause (b) of the proviso to section 51 of the Code will only tend to be a burden to the decree-holder and accentuate the delay without reduction in the costs involved. The Committee consider that the proposed amendments are not desirable.

The Committee, however, feel that the provision for the execution of decree by arrest and detention in prison, as is provided in clause (c) of section 51, should be harmonious with the provisions of section 58 of the Code. The clause has been amended accordingly.

29. *Clause* 22 (*Original clause* 23).—Section 58 of the Code, as it now stands, does not give the court any discretion as to the term for which a person may be detained in civil prison in execution of a decree for the payment of money. The Committee, therefore, feel that such discretion should be conferred on the court.

The section further provides for the detention in civil prison for a period of six months if the amount of the decree exceeds fifty rupees or for six weeks in any other case. The Committee feel that the monetary limit should be raised to one thousand rupees. Further, the maximum period of imprisonment should be reduced to three months where the amount of the decree exceeds one thousand rupees, and six weeks in any other case.

The Committee further feel that a man should not be detained in civil prison where the amount of the decree does not exceed five hundred rupees so that the poor debtors may not be harassed by their detention in civil prison.

The clause has been amended accordingly.

30. *Clause* 23 (*Original clause* 24).—(i) The Committee note that in view of the merger of dearness allowance with the pay, the attachable portion of the salary in execution of a decree has also increased. In view of the hardship which is likely to be caused by the increase in the attachable portion of the salary (a substantial part of which was not previously attachable), the Committee feel that the limit of exemption from attachment of a salary in execution of a decree should be raised to rupees four hundred and two-thirds of the remainder of the salary. Sub-clause (i) (c) (i) has been amended accordingly.

(ii) The amendment made in the proviso to sub-clause (i) (c) (ii) is of a clarificatory nature.

(iii) The Committee note that all deposits in any fund to which the Public Provident Fund Act, 1968, applies, are exempt from attachment under the provisions of the Code. The Committee, however, feel that it would be safer to provide in the Code itself that the deposit under the said Act are exempt from attachment so that the provisions of that Act may not be lost sight of.

A new clause (ka) to sub-clause (i) (e) of the clause has been added accordingly.

(iv) The Committee feel that in the definition of "labourer", unskilled labourer should also be included. Proposed Explanation IV to sub-clause (i) (i) has been amended accordingly.

(v) The Committee are of the view that an agriculturist, for the purpose of being granted exemption from attachment under the provisions of the Code, should mean a person, who cultivates land personally or through his labour or the labour of any member of his family or the servants or labourers on wages payable in cash or in kind, and who depends for his livelihood mainly on the income from agricultural land.

Proposed Explanation V of sub-clause (i) (i) of the clause has been amended accordingly. A new Explanation VI has also been inserted with a view to clarifying which agriculturist shall be deemed, for the purposes of Explanation V, to cultivate land personally.

31. *Clause* 26 (*Original clause* 27).—The Committee feel that the Court should also be authorised to issue commissions for technical and expert investigation.

The clause has been amended accordingly.

32. *Clause* 27 (*Original clause* 28).—The Committee feel that the omission of section 80 of the Code, as proposed in the Bill, will not be in the public interest. It might prompt people to file suits against the Government to prevent it from undertaking any measure for the benefit of society and this might also hinder the pace of developmental activities. The Committee are, therefore, of the view that provisions contained in section 80 of the Code should be retained subject to the modifications indicated hereafter.

The Committee, however, feel that some relaxation of the provisions of section 80 of the Code is necessary so that a person may not be deprived of the opportunity of obtaining an urgent or immediate relief, where such relief is essential. In the circumstances, the Committee feel that section 80 of the Code should provide for the institution of a suit for obtaining an urgent or immediate relief against the Government or any public officer in respect of any act purporting to have been done by such public officer in his official capacity without serving any notice under section 80; but, in such a case, the court should not grant any relief except after giving to the Government or the public officer, as the case may be a reasonable opportunity of showing cause in respect of the relief prayed for in the suit.

The Committee also feel that with a view to seeing that the just claims of many persons are not defeated on technical grounds, the suit against the Government or a public officer should not be dismissed merely by reason of any technical defect or error in the notice or any irregularity in the service of the notice if the name, description and residence of the plaintiff has been so given in the notice as to enable the appropriate authority or public officer to identify the person serving the notices, and the notice had been delivered or left at the office of the appropriate authority, and the cause of action and the relief claimed have been substantially indicated in the notice. The clause has been amended accordingly.

33. *Clause* 28 (Original clause 29).—Section 82 of the Code as it now stands, provides that where a decree is passed against the Government or a public officer, a time shall be specified in the decree within which it shall be satisfied and if the decree is not satisfied within the time so specified or within three months from the date of the decree where no time is so specified, the court shall make a report of the case to the State Government and execution shall not be issued on any such decree unless it remains unsatisfied for a period of three months computed from the date of such report. In the Bill, the necessity of making a report to the Government has been dispensed with. But it was proposed to empower the court to extend the period during which the decree shall not be executable. The Committee feel that such a power to extend the time during which the decree shall not be executable

should not be granted to the court, so that the decree-holder may not be deprived of the fruits of his decree for an indefinite period. The amendments proposed to sub-section (2) have been modified and sub-section (4), as proposed to be inserted, has been omitted.

The Committee also feel that the provision for giving an intimation about the decree to the Government Pleader, who is expected to know about the decree, is not at all necessary. Accordingly, sub-section (5), as proposed to be inserted, has been omitted.

34. *Clause* 30 (*Original clause* 31).—The amendment made in this clause is of a drafting nature.

35. *Clause* 33 (*Original clause* 34).—The Committee feel that in view of the amendment made in Order XLI, rule 22, the Explanation proposed to be inserted in sub-section (1) of section 96 of the Code is not necessary. Sub-clause (i) of the clause has, therefore, been omitted.

36. *Original clause* 35.—The Committee feel that, in view of the amendments proposed in clause 3 of the Bill, amendment of section 97 of the Code proposed in this clause is not necessary. The clause has been omitted accordingly.

27. *Clause* 37 (*Original clause* 39).—The Bill seeks to substitute a new section for section 100 of the Code, so as to restrict the scope of second appeals.

The Committee have carefully considered the question whether section 100 of the Code should be retained in its present form or whether any modification therein is necessary. Having regard to the observations made by the Law Commission and the evidence tendered before it, the Committee feel that the scope of second appeals should be restricted so that litigations may not drag on for a long period. The Committee, therefore, feel that the amendment proposed in the Bill should be retained subject to certain modifications. As the amendment incorporated in the Bill stands, the court is required to certify that the case involves a substantial question of law; the Committee feel that it should be sufficient if the court is required to formulate the substantial question of law. The Committee also feel that the court should not be required to state the reasons for formulating any question of law.

The Committee also feel that the discretion of the court to hear the appeal on any other substantial question of law, not formulated by it, should not be taken away, so that justice may be done between the parties. The clause has been modified accordingly.

38. *Clause* 40 (*Original clause* 42).—The Committee feel that as the second appeal will be confined to substantial question of law, the words "of fact" are not necessary. The clause has been amended accordingly.

39. *Clause* 43 (*Original clause* 45).—By clause 45 of the Bill, section 115 of the Code was proposed to be omitted. The question whether it is at all necessary to retain section 115 was carefully considered by the Committee. The Law Commission has expressed the view that, in view of article 227 of the Constitution, section 115 of the Code is no longer necessary. The Committee however, feel that the remedy provided by article 227 of the Constitution is likely to cause more delay

and involve more expenditure. In remedy provided in section 115 is on the other hand, cheap and easy. The Committee, therefore, feel that section 115, which serves a useful purpose, need not be altogether omitted particularly on the ground that an alternative remedy is available under article 227 of the Constitution.

The Committee, however, feel that, in addition to the restrictions contained in section 115, an overall restriction on the scope of applications for revision against interlocutory orders should be imposed. Having regard to the recommendations made by the Law Commission in its Fourteenth and Twenty-seventh Reports, the Committee recommend that section 115 of the Code should be retained subject to the modification that no revision application shall lie against an interlocutory order unless either of the following conditions is satisfied, namely:—

(i) that if the orders were made in favour of the applicant, it would finally dispose of the suit or other proceeding; or

(ii) that the order, if allowed to stand, is likely to occasion a failure of justice or cause an irrepairable injury.

The Committee feel that the expression "case decided" should be defined so that the doubt as to whether section 115 applies to an interlocutory order may be set at rest. Accordingly, the Committee have added a proviso and an Explanation to Section 115.

40. *Original clause* 47.—The Committee are of the view that section 132 of the Code should be retained as the omission of this section would offend against the social custom and would also enable unscrupulous litigants to compel the personal appearance in court of innocent and ignorant ladies who are not used to appear in public. The clause has been omitted accordingly.

41. *Clause* 45 (*Original clause* 48).—The Committee were informed that in certain parts of the country, in view of the absence of specific mention in section 135A of the Code of the members of Parliament, the provisions of that section are not correctly interpreted and the members of Parliament do not get the exemption granted thereunder. The Committee feel that in order to avoid any ambiguity and to ensure that the members of all legislative bodies in the country are not prevented from discharging their duties, the provisions of the Code should be suitably amended. Sub-section (i) of section 135A has been amended accordingly.

42. *Clause* 49 (*Original clause* 52).—The amendment made in this clause is of a drafting nature.

43. *Clause* 50 (*Original clause* 53).—The Committee feel that where a caveat has been lodged under sub-section (1) of the proposed new section 148A, such caveat should not remain in force indefinitely and a time-limit of ninety days should be prescribed. The clause has been amended accordingly.

44. *Clause* 55 (*Original clause* 58).—(i) The question whether the proposed proviso to rule (1) of rule 1 of Order V should be retained in the Bill was considered by the Committee. The Committee feel that since the said proviso only seeks to give effect to the provisions of rule 1 of Order VIII, there is no need to omit the proviso. The Committee,

however, feel that the words "in appropriate cases", occurring in the said proviso, are superfluous and not necessary. Accordingly, the said words have been omitted.

(ii) The Committee are of the opinion that a summons may be served in the manner specified in rule 17 of Order V on a defendant who is absent from his residence and there is no likelihood of his being found at the residence within a reasonable time, if the serving officer, after using all due and reasonable diligence, cannot find the defendant. Sub-clause (iii) of this clause has been amended accordingly.

(iii) The Committee are of the view that in order to establish that the summons has been duly served on the defendant, the simultaneous issue of summons for service by post should be done by registered post acknowledgment due. Sub-rule (1) of proposed new rule 19A has been amended accordingly.

(iv) The Committee also feel that in the case of issue of summons for service by registered post, if the defendant refuses to take delivery of the summons, when tendered to him, or the fact that the acknowledgment has been lost or mislaid or has not been received back by the court for any other reason within thirty days from the date of issue of the summons, the court should be authorised to draw a presumption that the summons had been duly served on the defendant. Sub-rule (2) of proposed new rule 19A has been amended accordingly.

(v) The Committee note that there is a reference in rule 25 regarding service of summons to a defendant residing in Pakistan. The Committee feel that in view of the emergence of Bangladesh, the name of Bangladesh should also be included in the rule. A new sub-clause (iva) in this clause proposing necessary amendment to rule 25 has been inserted accordingly.

45. *Clause* 56 (*Original clause* 59).—(i) The Committee are of the opinion that in order to ensure that the parties to a suit do not at a later stage take the plea that wrong dates, sums or numbers had been mentioned in the pleading due to accidental, clerical or typographical error, the dates, sums and numbers in a pleading should also be expressed in words. Sub-rule (3) of proposed new rule 2 in Order VI has been amended accordingly.

(ii) The Committee feel that the proposed new sub-rule (2) in rule 17 of Order VI empowering the court to allow the plaint to be amended even in cases where the effect of amendment would be to take away the suit from the jurisdiction of the court, and to return the plaint for presentation to the proper court, is not desirable. Such a provision would enable certain litigants to drag on the proceedings indefinitely. All that he has to do it is to make an amendment which that particular court is not competent to try so that matter may go to another court Sub-clause (iv) of this clause has, therefore, been omitted.

46. *Clause* 57 (*Original clause* 60).—(i) The Committee note that rule 10 of Order VII provides for the return of plaint and the proposed new rule 10A lays down a certain procedure to be followed before the plaint is returned. The Committee feel that there should be a harmony between the provisions contained in rule 10 and those contained in new rule 10A. A new sub-clause (va) in this clause has been inserted for achieving the said object.

(ii) The Committee note that in the proposed new rule 10B in Order VII, reference to the transfer of the suit does not appear to be accurate because when a plaint is returned, there is no suit which can be transferred. Proposed new rule 10B has, therefore, been amended with a view to conform to the provisions with regard to the return of plaint.

47. *Clause* 58 (*Original clause* 61).—The amendments made in the proposed new rule 6E are clarificatory in nature.

48. *Clause* 59 (*Original clause* 62).—(i) The Bill provides that when the plaintiff appears and the defendant does not appear, the court may proceed *ex parte* if it is proved that the summons was duly served and may give a judgment on the basis that the facts stated in the plaint are true. The Committee feel that the court should not be empowered to pass an *ex parte* decree unless there was evidence before it to indicate that if such evidence were not controverted, the plaintiff would be entitled to a decree. In the circumstances, the Committee feel that the *status quo ante* should be maintained. Proposed clause (a) of sub-rule (1) of rule 6 has been amended accordingly.

(ii) The proposed Explanation to rule 13, as in the Bill, provides that where an appeal has been filed against a decree passed *ex parte* and the appeal has been disposed of, no application shall lie for setting aside the *ex parte* decree. The Committee feel that such a prohibition should not be made in a case where the appeal has been withdrawn. The scope of inquiry in an appeal against a decree passed *ex parte* being different from the scope of an application for setting aside a decree passed *ex parte*, the defendant should not be deprived of an opportunity of filing an application for setting aside the decree if he has withdrawn the appeal against the *ex parte* decree. The Committee does not, however, propose to extend the period of limitation so that the defendant, who may intend to file an application for setting aside the *ex parte* decree, should satisfy the requirements of the Limitation Act, 1963.

The Explanation, as proposed in the Bill has, therefore, been amended to achieve the said object.

49. *Clause* 62 (*Original clause* 65).—The Committee note that as there is no time-limit laid down for filing of documents in rule 2 of Order XII, it causes unnecessary delay in the disposal of suits. The Committee feel that in order to expedite disposal of suits, a time-limit of fifteen days for filing of documents might be fixed. Sub-clause (i) in this clause proposing amendment to rule 2 of Order XII has been inserted accordingly.

50. *Clause* 66 (*Original clause* 69).—Rule 1 (1) of Order XVI, as proposed to be substituted by the Bill, provides for the filing of list of witnesses within ten days after the date on which issues are settled. The Committee feel that the period of ten days for the filing of a list of witnesses by the parties whom they proposed to call either to give evidence or to produce documents is not sufficient and it may be raised to fifteen days. Sub-rule (1) of rule 1 of Order XVI has been amended accordingly.

51. *Clause* 69 (*Original clause* 72).—(i) The Bill provides for the recording of evidence in English if such evidence is given in English. The Committee note that there is no provision in the Code to the effect

that where evidence is given in any other language, it may be recorded in English. The Committee feel that since different languages are spoken in different parts of the country and in view of the rapid expansion of means of communications, there is possibility of a man from the North being sued in a court in the South and *vice versa*, a provision might be made in the Code to the effect that if both the parties agree, evidence may be taken down in English even though such evidence is given in any language other than English. Sub-rule (2) in rule 9 of Order XVIII has been inserted accordingly.

(ii) The Committee were informed that under rule 18 of Order XVIII, the court is empowered to make local inspection but there is no specific provision requiring the court to make a record of the result of inspection. There is a conflict of judicial decisions on the question whether failure to record the results of inspection by a judge vitiates the proceedings or not. The Committee feel that the conflict in the judicial decisions should be removed by making a specific provision requiring the judge making the local inspection to make a memorandum of any relevant facts observed by him at such inspection and to place such memorandum on the record. Sub-clause (ix) in this clause has been inserted accordingly.

52. *Clause* 70 (*Original clause* 73).—(i) During the evidence, several witnesses complained before the Committee that judgments are reserved after the conclusion of the hearing of cases and that thereafter delivery of judgments is inordinately delayed. There was a persistent demand all over India for imposing a time-limit for the delivery of judgment after the conclusion of the hearing of the case. Having regard to the evidence tendered before the Committee and having regard to the pressure of business before the courts of law, the Committee are of the opinion that a provision should be made in the Bill to the effect that on the conclusion of the hearing of a case, the judgment, if not delivered at once, should ordinarily be delivered within fifteen days from such conclusion of hearing and if it is not practicable to do so, then the judgment should be delivered within thirty days. If, however, it is not practicable to deliver the judgment even within thirty days, the court should be required to record the reasons for such delay and should fix a future date for the pronouncement of the judgment and the notice of the date so fixed should be given to the parties or their pleaders.

Two provisos to sub-rule (1) of rule 1 of Order XX have been inserted accordingly.

(ii) The Committee note that there is no provision in rule 1 of Order XX for the dictation of judgment in open court to a shorthand writer. The Committee are of the opinion that the judge might be authorised to pronounce a judgment by dictation to a shorthand writer in open court if he is empowered by the High Court to do so. Sub-rule (3) of rule 1 in Order XX has been inserted accordingly.

(iii) The Committee note that the new rule 5A proposed to be inserted in sub-clause (iii) of this clause requires the court to inform the parties present in the court, and not represented by lawyers, as to the court to which an appeal lies and the period of limitation for the filing of such appeal. The Committee feel that controversies might arise at a later stage as to the nature of information given by the court unless it was placed on record. The Committee are, therefore, of the view that in order to ensure that there is no dispute at a later date, the

judge should be required to place on record the precise nature of information given by him to the parties. Proposed new rule 5A in Order XX has been amended accordingly.

(iv) The Committee feel that it should be made obligatory on the part of the court to draw up the decree within fifteen days from the date on which the judgement is pronounced. In case it is not possible to draw up the decree within the period so fixed, the court, on a request by a party desirous of appealing against the decree, should be required to certify that the decree has not been drawn up and also to indicate in the certificate the reasons for the delay. As already proposed, an appeal might be preferred on filing a copy of the last paragraph of the judgment, but as soon as the decree is drawn up, the last paragraph of the judgment should cease to have the effect of a decree. Sub-rule (2) of proposed new rule 6A of Order XX has been amended accordingly.

(v) The Committee are of the view that the court, while passing a decree in a suit for the rent or mesne profits under clause (b) of sub-rule (1) of rule 12 of Order XX, should be required to take into consideration not only the rent or mesne profits which would have accrued on the property but also the rent or mesne profits which the decree holder would have, with the diligence, received from the property. Sub-rule (1) (b) of rule 12 of Order XX has been amended accordingly.

(vi) The Committee note that the new rule 12B proposed to be inserted in Order XX deals with the execution of a document or endorsement of a negotiable instrument in pursuance of a decree whereas Order XX deals with the contents of the judgement and the decree. The Committee, therefore, feel that the proper place for the proposed rule is in Order XXI, and not in Order XX. The Committee also note that the proposed rule 12B is almost a verbatim copy of rule 34 of Order XXI subject to certain modifications. The Committee, therefore, feel that the proposed rule 12B should be omitted from Order XX, and, instead of omitting rule 34, modifications, as suggested by the Law Commission should be made therein. Proposed rule 12B has been omitted accordingly.

53. *Clause* 71 (*Original clause* 74).—The Committee note that under rule 2 of the proposed new Order XXA, a provision has been made that in calculating costs, no amount shall be included as pleader's fees unless a receipt signed by the pleader or a certificate in writing signed by him and stating the amount received by him has been filed in the court. The Committee feel that since pleader's fees are allowed in accordance with the scales fixed by the High Court no useful purpose would be served by such a provision. Besides, such a provision would not only lead to hardship but may also cause delays in the drawing up of decrees in the cases where the payment of pleader's fee is deferred, as it happens in the cases of fees payable by the Government or any public sector undertaking or a company. Rule 2 of proposed new Order XXA has been omitted accordingly.

54. *Clause* 72 (*Original clause* 75).—(i) The Committee note that there is no provision in the Code in relation to cessation of interest on the money paid under a decree out of court to a decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing. The Committee are of the view that, in such

a case, the interest should cease to run from the date of such payment. In case the decree-holder refuses to accept the postal money order or payment through a bank, interest should cease to run from the date on which the money was tendered to him or would have been tendered to him in ordinary course of business of the postal authorities or the Bank. Sub-rule (5) in rule 1 of Order XXI has been inserted accordingly.

(ii) Amendment made in Sub-clause (xv) of this clause is consequent upon the omission of the proposed new rule 12B of Order XX.

(iii) The Committee note that under the proposed sub-rule (1) of rule 57 in sub-clause (xxiv) of this clause, the provision made does not indicate as to how long the attachment in execution of a decree, after the execution case is dismissed, shall continue. The Committee feel that it should be made obligatory on the part of the court to indicate the period up to which the attachment will continue or the day on which such attachment will cease. The Committee also feel that in case the court omits to indicate the period, the attachment, after the execution case is dismissed, should be deemed to have ceased. Sub-rules (1) and (2) of rule 57 of Order XXI have been amended accordingly.

(iv) The Committee feel that in certain cases, where a property is ordered to be sold in execution of a decree under sub-rule (2) of rule 66 of Order XXI, it may not be necessary to sell the whole of the property indicated by the decree-holder. The Committee are, therefore, of the opinion that a power might be conferred on the court to the effect that in a case, where the court is satisfied that the sale of a part of the property would be sufficient to satisfy the decree, the court should specify in the proclamation of sale only such part of the property. Clause (a) of sub-rule (2) of rule 66 of Order XXI has been amended accordingly.

(v) The Committee note that the amendment proposed to be made in sub-rule (1) of rule 92 of Order XXI does not bring out clearly the intention of the Law Commission made in its Twenty-seventh Report to the effect that where a claim against an attachment in execution of a decree has been made but the property so attached has been auction-sold pending the determination of such claim, the sale should not be confirmed before the claim has been finally disposed of. Sub-clause (a) of clause (xxxii) of this clause has been amended with a view to bringing out the idea clearly.

(vi) The Committee note that the expression "order" occurs in the proposed new rule 104 of Order XXI but it does not occur in the proposed rules 98 and 100 of the same Order. Sub-rule (1) of rule 98 of Order XXI has been re-drafted accordingly.

(vii) The Committee note that the proposed sub-rule (2) of rule 98 of Order XXI covers obstruction by the judgment-debtor or by some other person at his instigation or on his behalf but does not cover obstruction by any transferee *pendente lite*. Sub-rule (2) of rule 98 of Order XXI has been amended to remove this lacuna.

(viii) The amendment made in rule 100 of Order XXI is of a consequential nature.

(ix) The Committee note that the proposed rule 101 of Order XXI empowers the executing court to decide all questions including questions relating to right, title or interest in the property. The Committee feel that the court executing the decree may not have jurisdiction, pecuniary or otherwise, to decide the question of right, title or interest in the property in question. Such an absence of jurisdiction may lead to delay in the disposal of the matter. The Committee are, therefore, of the opinion that the executing court should be clothed with jurisdiction to decide all such questions so that such questions may be heard and finally decided. Proposed rule 101 of Order XXI has been amended accordingly.

55. *Clause* 73 (*Original clause* 76)—(i) The Committee were informed during the course of evidence by various witnesses that delay in the substitution of the legal representatives of the deceased defendant was one of the causes of delay in the disposal of suits. The Committee were also informed that, as a remedial measure, the Calcutta, Madras, Karnataka and Orissa High Courts had inserted a new sub-rule in rule 4 of Order XXII to the effect that substitution of the legal representatives of a non-contesting defendant would not be necessary and the judgment delivered in the case would be as effective as it would have been if it had been passed when the defendant was alive.

The Committee are, therefore, of the view that in order to avoid delay in the substitution of the legal representatives of the deceased defendant and consequent delay in the disposal of suits, similar provision may be made in the Code itself. New sub-rule 3A in rule 4 of Order XXII has been inserted accordingly.

(ii) The Committe note that the Limitation Act, 1963, specifies the period of limitation. The Committee feel that the expression "prescribed period, as provided in the Limitation Act, 1963" used in clause (a) of the new proposed sub-rule (4) in rule 4 of Order XXII is not correct and has, therefore, been amended accordingly .

(iii) During the course of evidence, a point was raised that, on the death of the client, the contract with the pleader comes to an end and so the obligation of the pleader to act on behalf of his client ceases on the death of the client. The Committee, however, feel that it should be made obligatory on the part of the pleader to inform the court about the death of his client and for this purpose the contract between the pleader and the party should be deemed to subsist. Sub-rule (1) of new proposed rule 10A of Order XXII has been amended accordingly.

(iv) The Committee feel that in view of the amendment made in sub-rule (1) of new proposed rule 10A, proposed sub-rule (2) in rule 10A is not necessary as the provision is likely to cause hardship to the pleader. Sub-rule (2) of new proposed rule 10A of Order XXII has been omitted accordingly.

56. *Clause* 75 (*Original clause* 78).—(i) Under the provisions of proposed new rule 16A of Order XXVI, the Commissioner has been authorised to take down the question, the answer and the objection etc. Occasions, may arise where the objection to the question put to the witness may be raised on the ground of privilage. If, in such a case, the Commissioner is required to take down the answer to the question, then, the privilege claimed would be lost. The Committee are, therefore, of the view that, in such a case the Commissioner should

not be allowed to take down the answer to a question but might be allowed to continue with the examination of the witness leaving the party to get the question of privilege decided by the court. A proviso to sub-rule (1) of the proposed new rule 16A of Order XXVI has been inserted accordingly.

(ii) The Committee are of the view that in order to avoid delay, the court issuing a Commission should fix a date by which the Commission should be returned to it after execution. New rule 18B in Order XXVI has been inserted accordingly.

(iii) Amendment made in sub-clause (viii) of this clause is consequent upon the insertion of new rule 18B in Order XXVI.

57. *Clause* 76 (*Original clause* 79).—The Committee note that in the case of a suit against the Government or a public officer, the maximum time which the court can grant for the filing of the defence is two months in the aggregate whereas there is no such restriction on the powers of the court to grant time to file written statement in the case of other defendants. The Committee feel that this may be regarded as discriminatory. The Committee are of the view that initially the court should have discretion to fix such time as it might think fit for filing of defence by the Government, but so far as the extension of the time is concerned, the period of such extension should not exceed two months in the aggregate. Sub-clause (i) of this clause has been amended accordingly.

58. *Clause* 79 (*Original clause* 82).—The Committee are of the view that in spite of an affidavit by a next friend or the guardian of a minor or the certificate by a pleader to the effect that the agreement or compromise is for the benefit of the minor in a case where an agreement or compromise is proposed to be filed in a suit in which a minor is a party, the powers of the court to make an independent examination as to whether the compromise or agreement is for the benefit of the minor should remain unaffected. A new proviso to proposed new sub-rule (1A) of rule 7 in Order XXXII has been inserted accordingly.

59. *Clause* 80 (*Original clause* 83).—(i) The Committee note that new Order XXXIIA makes provision for the procedure for suits relating to matters concerning the family. But clause (f) of sub-rule (2) of rule 1 enumerates a suit or proceeding relating to wills, intestacy and succession. The Committee feel that such suits or proceedings may or may not be instituted by a member of the family. The Committee are, therefore, of the opinion that the provisions of this clause should be restricted to a suit or proceedings instituted by a member of the family so that suits or proceedings filed by a third party might be governed by the ordinary procedure. Clause (f) of sub-rule (2) of rule 1 of the proposed new Order XXXIIA has been amended accordingly.

(ii) The Committee are aware that the connotation of "family", as given in rule 6, is for the purposes of Order XXXIIA, yet the Committee feel that it should be clarified that the definition of "family" in rule 6 is without prejudice to the connotation of that expression in any personal law or in any other law for the time being in force. An Explanation to rule 6 of new Order XXXIIA has been inserted accordingly.

60. *Clause* 81 (*Original clause* 84).—(i) The Committee note that rule 3 of Order XXXIII requires the application for permission to sue as an indigent person to be presented by the applicant in person. The Committee feel that where the number of plaintiffs is more than one, it should not be necessary for all the plaintiffs to present the application in person. In such a case, it should suffice if the application is presented in person by one of the plaintiffs. A proviso to rule 3 of Order XXXIII has been inserted accordingly.

(ii) The Committee note that in the first portion to the proposed new sub-rule (2) of rule 15 of Order XXXIII, it has been provided that in the case of a person whose application for permission to sue as an indigent person has been rejected, no suit by such person shall be entertained unless such person pays the costs, if any, incurred by the State Government and by the opposite party in opposing the application of such person for permission to sue as an indigent person. This portion, therefore, clearly prohibits the entertainment of the suit unless the costs are paid. But, in the second portion, it is provided that if the costs are not paid at the time of the institution of the suit or within such time as the court may allow, the plaint shall be rejected.

The Committee feel that the person whose application for permission to sue as an indigent person has been rejected and who seeks to file a suit, may not have the means to pay the costs in addition to the court fee payable by him at the time of the institution of the suit and a poor person, who has a genuine claim, may lose his claim if payment of the costs is made a condition precedent to the institution of the suit.

The Committee are, therefore, of the view that in such a case the plaint should be rejected if the costs are not paid either at the time of the institution of the suit or within such time thereafter as the court might allow. Sub-clause (x) of this clause has been amended accordingly.

61. *Clause* 82 (*Original clause* 85).—During the course of evidence before the Committee, various witnesses stated that the proposed removal of the provision for passing a preliminary and a final decree might not serve the objective of expediting matters as the proceedings might be delayed by preferring appeals against every order passed during the execution proceedings and the proposed amendment might give rise to more appeals than at present.

The Committee feel that since preliminary decrees and final decrees are not being abolished in relation to suits, other than mortgage suits, no useful purpose would be served by abolishing the preliminary decree in mortgage suits only. The clause has been amended accordingly.

62. *Clause* 84 (*Original clause* 87).—(i) The amendment made in the proviso to clause (b) of sub-rule (1) of proposed rule 1 in Order XXXVII is of a drafting nature.

(ii) The Committee note that in Order XXXVII, the sequence is that summons of the suit to the defendant is issued first and, when the defendant appears, the plaintiff is required to serve on the defendant a summons for judgment. When a summons for judgment is served, the defendant is required to obtain the leave of the court to defend the suit But this sequence has been altered by the proposed sub-rule (3) of

rule 2 which requires the defendant to obtain the leave of the court to defend the suit at the stage when he enters appearance. Since this is not the intention, sub-rule (3) of rule 2 of Order XXXVII has been amended accordingly.

(iii) The Committee note that the Code does not give any guidance as to the grounds on which the petition for leave to defend the suit would be refused. The Committee feel that if such leave is refused, the defendant would be deprived of the opportunity of contesting the suit and consequently he would have to suffer the decree prayed for against him. The Committee have, therefore, provided that in case the court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up is frivolous or vexatious, the leave to defend the suit should be refused.

The Committee are also of the view that if any amount is admitted by the defendant to be due from him, leave to defend should not be granted unless the admitted amount is deposited by him in the court. Two provisos to sub-rule (5) of rule 3 of Order XXXVII have been inserted accordingly.

63. *Clause* 85 (*Original clause* 88).—(i) In view of the amendments made by the Committee in section 58, sub-clause (i) of this clause has been omitted.

(ii) The Committee note that the proposed amendment made in new sub-rule (4) of rule 5 of Order XXXVIII provides that an attachment which is not made in the manner specified in rule 5 shall be void. But rule 5 does not specify any manner in which an attachment shall be made. Rule 5 only specifies the circumstances in which an attachment before judgment may be made. The Committee are of the view that it should be made clear that an attachment before judgment would be void if the provisions of sub-rule (1) of rule 5 had not been complied with. Proposed sub-rule (4) of rule 5 of Order XXXVIII has been amended accordingly.

64. *Clause* 86 (*Original clause* 89).—(i) During the course of evidence, it was stated that the proviso proposed to be inserted to rule 3 of Order XXXIX would, instead of serving the purpose, have the opposite effect. The Committee feel that in case a party praying for the injunction is required to deliver a copy of the application for injunction or other documents to the opposite party before the court grants an *ad interim* injunction, the defendant would come to know of the impending application for the temporary injunction and he would hasten the mischief which the proposed injunction was intended to prevent. The Committee are, therefore, of the opinion that rule 3 should be modified and it should be provided that copies of application, etc. should be sent or delivered to the defendant immediately after the injunction has been granted (and not before the order for injunction has been made) and an affidavit should be filed by the applicant for injunction stating that it has been so sent.

The Committee are further of the view that before granting *ad interim* injunction, it should be made obligatory on the part of the court to record reasons for its opinion that the object of granting the injunction would be defeated by delay. Proposed proviso to rule 3 of Order XXXIX has been amended accordingly.

(ii) The Committee were informed that once an order for a temporary injunction is obtained by a party, he does not show any anxiety to expedite the disposal of the suit and, consequently, the injunction continues for an inordinately long period. The continuance of the injunction for a long period may not only cause hardship to the litigants but may also have the effect of holding up many of the welfare projects undertaken by the Government. In the circumstances it was provided in the Bill that a temporary injunction should not ordinarily remain in force for a period of more than thirty days, but the duration of the injunction could be extended to forty-five days with the consent of the opposite party, and that no extension beyond the period of forty-five days will be permissible. The Committee feel that it would be difficult to obtain the consent of the opposite party for the extension of the time limit. Accordingly, the provision for such extension of the time limit with the consent of the opposite party does not appear to be a practicable one. Further, the imposition of a rigid time limit may also lead to difficulties because occasions may arise when the court may not, for want of time, be able to dispose of the application for temporary injunction before the expiry of thirty days from the date on which the *ad interim* injunction was granted. The Committee, however, feel that, in order to avoid delay in the disposal of suits, it should be made obligatory on the part of the court to dispose of the application for injunction within thirty days from the date on which the *ad interim* injunction was granted by it; and where it is not practicable to do so, the court should be required to record its reasons for such inability. The proposed new rule 3A of Order XXXIX has been amended accordingly.

65. *Clause* 87 (*Original clause* 90).—(i) The Committee note that under the proposed new sub-rule (1A) of rule 3 in Order XLI, if the appellant fails either to deposit the amount disputed in the appeal or to furnish security for such amount, the memorandum of appeal shall be rejected. The Committee feel that such a provision will deprive a judgment-debtor having a good case, to pursue the appeal on account of his inability to deposit the disputed amount or to furnish security for such amount.

The Committee are, therefore, of the opinion that in order to see that justice is done to both the parties, the proposed sub-rule might be amended in such a way that neither the judgment-debtor is deprived of his right to pursue the appeal nor the decree-holder is deprived of the remedy. Proposed sub-rule (1A) has been amended to provide that stay of execution of the decree will not be granted unless the deposit is made or security is furnished and has been transposed as sub-rule (5) of rule 5.

(ii) The Committee are of the view that the court should not be empowered to grant *ad interim* stay of execution of the decree unless the court has, after hearing under rule 11 of Order XLI, decided to hear the appeal. Sub-rule (3) in the proposed rule 3A of Order XLI has been inserted accordingly.

(iii) The Explanation to sub-rule (1) of rule 5 provides that an order made by an Appellate Court for the stay of execution of a decree shall be effective from the date of communication of the order to the court of first instance, but an affidavit sworn by a pleader, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court, shall be acted upon by the court

of first instance. The Committee feel that the pleader should not be required to file an affidavit for the purpose and it would be sufficient if the affidavit is sworn by the appellant. The Explanation has been amended accordingly.

(iv) Consequent upon the amendment made by the Committee to sub-section (2) of section 2 of the Code, sub-rule (4) of rule 11 of order XLI has been omitted.

(v) During the course of evidence, it was stated that the appeals remained pending for a long time and consequently justice was delayed. It was stressed that a statutory time limit for the disposal of appeals should be fixed. The Committee feel that a statutory time-limit for the disposal of appeals is neither possible nor desirable.

The Committee are, however, of the view that a provision on the lines of the provisions made in the Representation of the People Act, 1951, with regard to the expeditious disposal of election cases, may have the effect of expediting, in most cases, the disposal of appeals. A new rule 11A in Order XLI has been inserted accordingly.

(vi) The Committee feel that the provisions made in the proposed new rule 12A empowering the court to admit an appeal in part or on specific grounds only are not desirable in the case of a first appeal but such a provision may be made in relation to a second appeal. Proposed new rule 12A in Order XLI has, therefore, been omitted and a consequential amendment has been made in Order XLII.

(vii) The amendments made in sub-clause (x) of this clause are of a clarificatory, drafting and consequential nature.

66. *Clause* 88 (*Original clause* 91).—The amendment made in this clause is consequent upon the amendments made in clauses 37 (original clause 39) and 87 (original clause 90) of the Bill.

67. *Clause* 89 (*Original clause* 92).—The Committee are of the view that the appellant should have the right to contest the decree not only on the ground that the compromise should not have been recorded but also on the ground that the compromise should have been recorded.

Sub-rule (2) of the proposed new rule 1A in Order XLIII has been amended accordingly.

68. *Original clause* 98.—The omission of this clause is consequential to the amendment made in Order XXXIV of the Code.

69. *Clause* 1 *and Enacting Formula.*—The amendments made are of formal nature.

70. The Joint Committee recommend that the Bill, as amended, be passed.

71. Since one of the main objects of the Bill is to bring about a reduction in the cost of litigation, the Committee feel that attention should be paid to the matter of court-fee although it is outside the scope of the Code. It has not been possible for the Committee to legislate with regard to court-fee because the Parliament's legislative competence with regard to court-fees is limited to Union territories as the subject (court-fee) falls in the State field (*vide* entry 3 of the State List). The Com-

mittee, however, feel that there should be a broad measure of equality in the scales of court-fee all over the country and the rates of court-fees should be very low, if not nominal, so that the less affluent sector of the community may not be deprived of equality before the laws. Further, even if court-fee is charged, the revenue derived from it should not exceed the cost of administration of civil justice. The Supreme Court has repeatedly pointed out that there is a distinction between a fee and a tax. Where a fee is charged, such fee must have a reasonable relationship with the services rendered by the Government. In other words, the levy must be proved to be a *quid pro quo* for the services rendered [AIR (1971) SC 1182].

72. Having regard to the observations made by the Supreme Court and the necessity to reduce the cost of litigation so that justice may not be denied to the poor, the Committee feel that effective steps should be taken by the Central Government to ensure that there is a uniformity in the rates of court-fees all over the country and that the rates of court-fees are brought down to such a level as to enable a poor person get a redress of his grievance from a court of law. The Central Government may further ensure that in case the amount received by the State Government by way of court-fees exceeds its expenditure on the administration of civil justice, such excess is spent for providing necessary amenities to the litigant public.

NEW DELHI;
April 1, 1976
Chaitra 12, 1898 (*Saka*).

L. D. KOTOKI,
Chairman,
Joint Committee.

MINUTES OF DISSENT

I

Clause 6

(*Section* 11 *of the Principal Act*)

The insertion of the explanation is superfluous. The doctrine of constructive *res-judicata* is already extended to the execution proceedings also by virtue of Supreme Court decisions. If the party has no right of appeal then that decision should not operate as *res-judicata* against him. Any provision to the contrary is basically wrong.

Clause 27

(*Section* 80 *of the Principal Act*)

In the original Bill, the Government wanted to delete the whole section. But the Committee thought it otherwise and retained it, but with modification. But I am sorry to state that the medicine is worst than disease which it wanted to cure. The amendment still insists on notice providing substantial cause of action. But on page 104 of the original Bill [Notes on clauses], it is stated "In a democratic country, there should be no distinction of the kind envisaged in section 80 between the citizen and the State. In those cases where a litigant rushes to the court without giving an opportunity to the other party to settle the claim, the general rules as to disallowance of costs should be adequate" and hence section 80 was omitted. But the Committee came to different conclusion. I do not agree with the conclusion of the Committee. Now-a-days, the Government are engaged in various industrial and commercial undertakings. The State by embarking upon the commercial undertakings enter in market conflicting with the private sector. Commercial undertakings are always involved in litigation. Section 80 gives a differential treatment for which there is no justification. I, therefore, opposed it and thereafter the Committee brought another (present) amendment. Even in the present amendment, there is no scope for the suit of injunction. I wanted that this section should be amended in this way—on page 10 of the Bill, line 6, *after* "suit" *insert* "other than a suit for bare injunction". If this would have been done, then it would have served my purpose. Therefore, I oppose the present amendment in section 80.

Clause 37

(*Section* 100 *of the Principal Act*)

This is a provision for second appeal. In this section, it is provided "Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the

High Court from any decree passed in appeal by any court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law." The memorandum of appeal shall precisely state the substantial question of law involved in the Bill. On page 106 in 'Notes on clauses' of the Bill, it is stated that section 100 is, therefore, being amended to provide that the right of second appeal should be confined to cases where a question of law is involved and such question of law is a substantial one. But without defining or saying what is substantial. The present amendment will practically destroy the right of second appeal. The amendment is not based on realistic appraisal of the character of the judgment of the subordinate courts, it is based on only substantial question of law. There may be little or no case whatsoever for second appeal. The Supreme Court [in AIR 1962, Supreme Court Page 1340] interpreted substantial question of law and stated that it is highly complex on which there is conflict of judicial decisions. The proposed amendment will bar against error of law or procedure. Therefore, the *status quo* should be maintained. Therefore, I oppose the present amended section.

Clause 43

(*Section* 115 *of the Principal Act*)

Section 115 confers power of revision on the High Court in a case not subject to appeal thereto. It empowers the High Court to call for the records of a case decided by an inferior court and to interfere if the inferior court has exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction so vested in it or has acted in the exercise of its jurisdiction illegally or with material irregularity.

It is true that according to Law Commission, in the Constitution, there is one provision that under Article 227 errors of jurisdiction and errors apparent on the face of the record can be corrected. But the third clause under section 115 will not be covered by Article 227 *viz.* when court acts or exercises jurisdiction with material irregularity they may not be possibly covered by Article 227 and it is also costly for the poor litigants. Therefore, revision petition application would lie under old section 115 of the Code. Instead of amending this section in this way a provision may be made that a civil revision application should be disposed of within three months from the date when the application came for hearing. It is an every day experience that large number of mistakes in judgments or decisions by subordinate courts are being corrected and the courts below have been kept within their bounds by the High Court. Therefore, instead of amending this section 115 in this way, the revisional powers may be given to the District Judge instead of to the High Court. The new amendment suggested by the Committee does not serve the purpose of the original section 115 and new amended section does not cover all the points contained in the original section 115. Therefore, I strongly feel to keep intact section 115, which is in favour of the poor litigants.

NEW DELHI; R. V. BADE.

March 29, 1976.

II

The present bill for the amendment of the Code of Civil Procedure, 1908 has been brought forward, as stated in the Statement of Objects and Reasons of the original bill, keeping in view the following basic considerations—namely:—

"(i) that a litigant should get a fair deal in accordance with the accepted principle of natural justice;

(ii) that every effort should be made to expedite the disposal of civil suits and proceedings so that justice may not be delayed;

(iii) that the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer section of the country, who do not have the means to engage a pleader to defend their cases."

In order to achieve these objectives, radical changes are necessary to be made in the Code in principle. The present Code, which is of Anglo-Saxon origin, is too technical to achieve that objective. Changes here and there, as is made in the present bill, is not sufficient for the purpose. In this respect, my suggestion is that we should try to revitalise the system of judiciary as envisaged in our Nyaya Panchayat system and try to make it up-to-date. We may take into account the system of judiciary as is prevalent in the socialist countries as well.

In this respect, I may quote, from the report of the expert Committee on the Legal Aid, headed by Justice Iyer:—

"111. One of the instruments of justice, which brings in the people not merely as consumers, but also as organisers in the Nyaya Panchayat. From the Shukra Niti to the Indian Constitution, Village Panchayats have been commended and if they are to be units of self-government, as directed in Article 40, justice at the lesser levels must be administered by the elected representatives of the people in the villages. Decentralisation of the justice administration and entrustment of judicial powers to popular elements may be resisted and elitist eye-brows raised. But as the famous fourteenth Report of the Law Commission and the Report of the study-team of Nyaya Panchayats both concluded, there is hardly any doubt that litigation will be reduced in volume, cost and time, if these little institutions come into existence all over the country" (page 39).

"113. The Justices of Peace in England, the people's Courts in Socialist Countries and the elected justices at the lowest rungs in many other countries, have worked successfully enough to induce our revival of the equivalent ancient Indian institutions, entrusted with wider powers, as part of the programme of local and low cost justice" (page 40).

Further the role of the judges, is in no way less important in reforming our judicial system. From my personal experience I can say—the more strict and competent the judges are, the more speedier the disposal of cases, and the more liberal and not upto the mark the judges are, the

more delay in deciding the cases, Law Commission in its fifty-fourth Report says—

> "53.3. Even at the cost of reptition, we wish to emphasise that the success of any system, and particularly the judicial system, depends on the men, who work the system. Judges play an important role in its working, and we must, therefore, make some recommendations for adequately preparing our junior judges for their task."

And for this purpose, they recommend a National Academy for judicial training.

Next the part played by lawyers in the judicial system is no less important than any other. Law Commission in its fifty-fourth Report says—

> "But the members of the Bar have also a vital contribution to make, and their willing and unstinted cooperation can contribute to the successful working of the system."

But I am afraid, that this willing and unstinted co-operation can hardly be obtained, because of the monopolistic tendency amongst our lawyers, which can only be uprooted by complete nationalisation of this profession.

The present amendments, as I have already stated are honest attempts to improve our judicial system, keeping the *status quo* of our present judicial system in tact. But there is hardly any possibility to do so, unless and until the system itself is changed.

So far as the present bill is concerned, I am submitting my dissenting note, which is as follows:—

Clause 27

In the original Bill, section 80 was omitted and this has been welcomed by almost all the Bar Associations of India. But I am sorry that the section has been reintroduced although in a modified form. In the Statement of Objects and Reasons of the original Bill, it has been stated—

> "Section 80 which provides for compulsory notice before the institution of the suit against the government or a public servant is being omitted, because it is felt that state or public officer should not have a privilege in the matter of litigation as against a citizen, and should not have a higher status than as ordinary litigant in this respect."

If this is the principle for omitting Section 80, I find no justification for reintroducing it.

Further Law Commission both in their 27th and 54th Reports concurrently recommend the deletion of this section.

Clause 28

As my view is that section 80 should be omitted, consistently section 82, which gives certain privileges to the Government in matters of execution of decree should be omitted.

Clause 37

Section 100 as in original Bill has been modified. But I think, section 100 of the principal Act needs no amendment. Further I think—every question of law is substantial. There cannot be any distinction between substantial question of law and unsubstantial question of law.

Clause 38

An appeal from the appellate decree from the single judge of High Court under Letters Patent, should be retained.

NEW DELHI;
March 29, 1976.

BIR CHANDRA DEB BARMAN.

III

The Joint Committee on the Code of Civil Procedure (Amendment) Bill, 1974, has taken great pains and after concluding their deliberations submitted the Report on the Bill to the House. Although, the Ministry of Law, Justice and Company Affairs has also co-operated to a great extent, still I have some points to make.

Unless the Procedure is simple, expeditious and inexpensive, the subsequent laws, however, good are bound to fail in their purpose and object. Hence, I suggest for pre-trial conferences in the following terms:

"In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider—

(1) the simplification of the issues;

(2) the necessity or desirability of amendments to the pleadings;

(3) the possibility of obtaining admission of fact and of documents which will avoid unnecessary proof;

(4) the limitation of the number of expert witnesses;

(5) the advisability of a preliminary reference of the issues to a master for findings to be used in evidence when the trial is to be by jury;

(6) such other matters as may aid in the disposition of the action."

The pre-trial conferences have resulted in a great success in other countries of the world. If a proper use is made of these pre-trial conferences, the judge or the presiding officer, at an early stage of the suit, be in a position to sift the chaff from the grain, and to pinpoint his attention on the matters on which the parties are at variance. A complete grasp of the case at an early stage of the suit will enable the Judge, when the suit comes up for hearing, to dispose it of expeditiously. It will enable him to narrow down the issues between the parties, and eliminate the need for recording formal or irrelevant evidence.

Though this principle has been accepted in the present Bill in Order XXXIIA, I suggest that this should be applicable in all cases. And

besides this, endeavour should also be made by the Court, in the first instance, where it is possible to do so, consistent with the nature and circumstances of the case, to assist the parties to arrive at a settlement in respect of the subject-matter of the suit.

The second thing that I suggest is that section 80 of the principal Act should be omitted. The present section 80 of the Code enacts that no suit shall be instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity until the expiration of two months after a notice in writing has been given.

The object of the section is to give to the Government and the public officer an opportunity to examine the legal position and to settle the claim, if so advised, without litigation.

There is no parallel provision in any other country in which the Anglo-Saxon system of law prevails. I think, that in a democratic country like ours there should, ordinarily, be no distinction of the kind envisaged in section 80 between the citizen and the State.

I recommend the omission of the section.

NEW DELHI; M. C. DAGA.
March 30, 1976.

IV

I have gone through the Report of the Joint Committee on the Code of Civil Procedure (Amendment) Bill, 1974 and consider that the same does not sufficiently plug the causes of cost and delay involved in litigations, to obviate which the Bill was intended. I am, therefore, constrained to submit this note of dissent being in disagreement with the majority Report particularly on Clauses 10, 11, 59 and 68, though in general agreement with the rest of the same. The matter was considered by the Committee with all earnestness at all stages and my note herein below instead of being called as a "dissent", it will be more appropriate to say it a rejoinder to the Report. Whatever that may be, before indicating my points, I should mention that after the Advocates Act, 1961 came into effect, there is neither *Mukhtiar* nor Pleader nor Barrister,—and all are 'Advocates'. Hence, the Report and the principal Act should be accordingly amended substituting "Advocate" for "Pleader" wherever it occurs.

Clauses 10 *and* 11.—Re-trial of a suit or proceeding after the order of transfer passed by either the District Court, High Court or the Supreme Court of India, often results in long delay in the disposal of such suit or proceeding besides causing heavy drain on the dwindling purse of the litigant public. If statistics are taken, it will definitely divulge that parties to a suit or proceeding are put to inconceivable sufferings because of re-trial of a suit or proceeding. In genuine cases, order for re-trial of a suit or proceeding are definitely justified. But if in each and every case, the option is given to the subordinate Courts either to re-try a suit or proceeding, or proceed from the point at which it was transferred or withdrawn, such Courts often feel inclined to rehear such cases. I am, therefore, of the view that the option for re-trial should not be left at the hands of the subordinate Courts but should be decided by the superior

Courts *viz.* District Court, High Court or Supreme Court, as the case may be, so that at the time of transferring a suit or proceeding from one Court to another, they may pay more attention to this aspect and incorporate their views in the special directions which they may choose to give to the subordinate transferee-Courts. I, therefore, oppose insertion of the words "either retry it or" as appearing in sub-section (2) of Section 24 of the Principal Act and insertion of such words in clause 11 under sub-Section (3) of Section 25 of the Bill as reported.

Clause 59 (*Original Clause* 62).—A plaintiff to a suit, who knows that his case is so weak that he will ultimately lose or, adopts since the filing of the suit, all sorts of *malafide* tactics of prolonging his case, and causes unnecessary harassment to the other side. Ultimately when the suit becomes ready for pre-emptory hearing, the plaintiff goes on committing the mischief on the defendant by allowing his suit to be dismissed for default on the one hand and by applying to the Court for restoration of the suit to its original file on the other. He goes on doing this trick as long as he can. Since the ruling of the Supreme Court and the different High Courts are that the Subordinate Courts should dispose of a suit on merit and that no party to a suit should be allowed to reap the benefit of a case decided on the ground of technical lapse on the part of one party to the suit, the Subordinate Courts go on liberally allowing such petitions of the plaintiffs for restoration of suit by awarding some nominal costs to the defendant.

Similarly, a defendant to a suit, who knows the feeble and weak nature of his defence and is sure to lose in the long run, adopts the same tactics by remaining absent on the day when the suit is called on for pre-emptory hearing thereby allowing, with ulterior motive, the plaintiff to obtain an *ex parte* decree against him from the Court. Immediately after, on the same day or on the following day, the said defendant appears in Court in person, files a petition for setting aside the *ex parte* decree obtained by the plaintiff on ground of his ignorance of the date of such hearing, or such other plea. This goes on repeatedly and the defendant never minds paying the costs awarded by the Court for setting aside such *ex parte* decree, particularly when he is rich and the adversary is poor or the cost awarded is nominal.

This is a major loophole in the Code of Civil Procedure and this must be plugged and the Courts should be given enough power to judge the *bonafide* nature of default arising out of deliberate non-attendance of either the plaintiff or the defendant and to dispose of such cases. Besides this, a limit should also be put on the number of times when the Courts can either restore a plaintiff's suit to file or set aside an *ex parte* decree. I am definitely of the opinion that this will go a long way in removing the bottleneck of early disposal of suits and proceedings.

Accordingly, I proposed that in original rule 9(1) in the First Schedule of Order IX, in line 5 thereof, after the words "for hearing", the words 'and the Court is fully convinced about the *bonafides* of the applicant", be inserted;

In rule 9(1), in the first Schedule of Order IX, after line 7, I proposed the addition of the provision, "provided that the Court shall not make an order setting aside the order of dismissal in a case where the plaintiff's suit was dismissed for default twice previously and such dismissal order

was set aside by the Court on both such previous occasions, "I considered them essential and maintain the same. Similarly, I feel that in original rule 13 in the First Schedule of Order IX, in line 5 thereof, after the words—"for hearing"—the words "and the Court is fully convinced about the *bonafides* of the applicant" can be inserted. This suggestion of mine was intended to arm the Court with a large amount of discretion against *malafide* strategy of designing litigants.

Finally, the following additional proviso should also be added to rule 13 after sub-clause (v) of clause 59 as reported—"(v)(a) provided further that the Court shall not make an order setting aside the *ex parte* decree in a case where decree was passed *ex parte twice* previously and that such *ex parte* decree was set aside by the Court on both such previous occasions."

Clause 68 (*Original Clause* 71).—Like-wise, parties to a suit or proceeding, who know in the heart of their hearts that they can never aspire to win a case in the long run in view of the weak and feeble grounds resorted to by them in their pleadings, often adopt the tactics of seeking adjournment after-adjournment just to prolong the case and to cause utter harassment to the other side. Amongst many flimsy grounds, these designing parties also put forward the ground of illness or inability of their Advocates to secure adjournments. Proviso (d) to sub-rule (2) of rule 1 of the First Schedule in Order XVII has been adopted by the Committee to stop all such unfair practice. But in my view still the *lacuna* is left and this proviso can be further improved, if the words "the party applying for adjournment could not have engaged another pleader in time" are substituted by the following words:—

> "the illness or inability of the Advocate of the party applying for adjournment is so sudden that the party could not have engaged another Advocate in time."

Besides this, I am strongly of the view that the Parliament should put a definite limit to such adjournments and for that purpose a further proviso *viz.* (dd) should be added under sub-rule (2) of rule 1 of First Schedule, Order XVII after proviso (d) on the following lines:—

> "(dd) adjournment shall not be granted to a party more than twice even in such exceptional cases." as was earlier proposed by me by way of an amendment. This will serve more than one purpose. Concentration of too many cases in the hands of senior Advocates will be checked, young Advocates will get chances to come up and delay causing inconvenience to the litigant public and consequent loss of the time of the Court for frequent adjournment, will be very much controlled.

I may indicate also that the respondent opposite parties, often urge preliminary objections, knowing fully that they are of no substance. Their sole purpose is to cause delay at every stage. In all such cases, exemplary costs should be prescribed for being granted by the Court.

In a poor country like India and for the matter of that in every democracy, the public should be released of the fetters of procedural law as much as possible, so that they may defend their right without the assistance of lawyers. The rule should, therefore, be very simple. But

our Civil Procedure Code is so complicated that it is difficult even for the lawyers and Judges to appreciate and follow. I may particularly refer to the provisions in the orders and rules for inspection and production of documents. The different stages like discovery, interrogatories, filing applications supported by affidavit, counter-affidavit by the other side and then a hearing all together makes the remedy more complicated than the disease. All these procedures consume time and money both. What is worse, it makes a lawyers' assistance imperative. I think that the provisions could be more simplified in this regard.

With these words, I submit my note for consideration by the House.

NEW DELHI;
March 30, 1976.

DWIJENDRA LAL SEN GUPTA.

Simplification of the judicial process and the Court trial procedures, removing of the causes of delay in the administration of justice and the final disposal of the suits and cases, catering the justice cheap and prompt, setting right the anomalies and complications arising out of the frequent amendments and judicial pronouncements of different superior courts regarding the procedural laws, extending the trial facilities upto the village level, appointing judges through elective methods and rendering the judiciary responsible and responsive to the changing aspirations of the struggling people were very much necessary.

The Code of Civil Procedure (Amendment) Bill, 1974 and the report of the Joint Committee of the Houses on the amendments suggested in the Bill have failed to respond to the expectations of the people, even in the context of the limited purpose as outlined by the Ministry of Law, Justice and Company Affairs in the Statement of Objects and Reasons.

The basis and guidelines for bringing changes in the provisions of the Civil Procedure Code, have mainly, if not wholly been drawn from the recommendation made from time to time by the Law Commission as per requisition from the Government. But as the members of the Law Commission have their own limitations, the amending Bill has fallen much short of the minimum expectations as regards the problems faced by the millions of litigants mostly coming from the classes of people connected with productive activities most of whom are illiterate or half literate, innocent of the complex legal process and implications and have no means to bear the burden of frequent travelling to the distant seats of Courts considerably losing their productive energy, the enduring continuation and ever increasing complications of the Court proceedings, unlimited, unforeseen and ruinous expenses; mechanical and unconcerned attitude of the Bench and unsatisfied creditor's outlook of the Bar.

Many witnesses were examined, lots of amendments were proposed and discussed, various changes have been made in the amendments proposed in the Bill. Without undermining the effort and exercises done by the Joint Committee of the Houses, one is forced to say that the amending Bill has failed to bring about any remarkable change in the Code in

respect of the basic problems of the administration of justice and judicial process and therefore the *status-quo* has been well preserved.

The striking feature of certain amendments incorporated in the Bill purportedly with a view to minimise delay and costs, is that the litigants have been made responsible for vices of the judicial system our country and many of their rights and scope of defences have been curtailed and pruned and heavier responsibility and burden have been placed on them, whether they remain capable to feed the hunger of the justice or quit the courts.

Instances of exceptions have become the cause of attack on important and vital fronts of the judicial remedies and ultimately the litigants in general have become victims of the proposed measures. The resourceful and capable speculator can still derive benefit by out-breathing the weak in the judicial contests.

In considering the causes of delay in disposal of suits the responsibility of the Government for not adequately increasing the number of courts, filling up the existing vacancies and also the responsibility of the courts and the lawyers and above all the lapses of the existing system of the judicial administration have not been properly fixed.

Even accepting the present set-up and the existing state of affairs for granted, a few instances of apprehensive consequences may be mentioned here.

Premium has been given by way of increasing the interest on the decreetal money to the decree holders who in many cases drag their opponents to the courts to grab the remnants the judgment debtors were holding (clause 13).

Any speculator once having succeeded in defeating his opponent having genuine claims in the original suit by winning or destroying his evidences, can acquire the rest of his belonging by invoking the provisions of the Bill (clause 14).

For minimising the delay in the disposal of the suits, which is inherent in the present system the burden has been shifted to the litigants (clauses 15 and 21).

In the original Bill, section 80 [two month's pre-filing notice where Government is to be made a party] was omitted, but the Government's policy in re-introducing the same pre-condition for filing suit against it, was not only ununderstandable, but surprising.

Restricting the scope of Appeals, whether first appeal or subsequent appeals as proposed in the new amendments is a matter of serious concern (clauses 33, 37 and 40).

In the matter of services of summons, the possibility of the ignorant, illiterate and indifferent tribal and aboriginal and similar classes of people becoming victims of the procedure has not been duly considered.

The scope of legal aid to the victims of the social oppressions and exploitations has not been adequately enlarged.

Free trial facilities for the indigent person has been restricted to the minimum.

While welcoming the last minute incorporation in the Bill of the directive guidelines to the States and the Union Territories on the move of the Ministry of Law, Justice and Company Affairs regarding introduction of a uniform and lower rate of court fees for the civil trials, I am constrained to say that the judicial Administration of our country still remains an institution of judicial trade.

DINESH JOARDER.

NEW DELHI;
March 31, 1976.

BILL NO. 27-B OF 1974

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1974

(AS REPORTED BY THE JOINT COMMITTEE)

[*Words side-lined or underlined indicate the amendments suggested by the Committee; asterisks indicate omissions.*]

A Bill further to amend the Code of Civil Procedure, 1908, and the Limitation Act, 1963.

BE it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and commencement.

1. (*1*) This Act may be called the Code of Civil Procedure (Amendment) Act, 1976.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act, and any reference in any provision to the commencement of this Act or to the commencement of the Code of Civil Procedure (Amendment) Act, 1976, as the case may be, shall be construed as a reference to the coming into force of that provision.

CHAPTER II

AMENDMENT OF THE SECTIONS

Amendment of section 1.

2. In the Code of Civil Procedure, 1908 (hereinafter referred to as the principal Act), in section 1, for sub-section (*3*), the following sub-sections shall be substituted, namely:— 5 of 1908.

'(*3*) It extends to the whole of India except—

(*a*) the State of Jammu and Kashmir;

* * * * *

(*b*) the State of Nagaland and the tribal areas:

Provided that the State Government concerned may, by notification in the Official Gazette, extend the provisions of this Code or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be, with such supplemental, incidental or consequential modifications as may be specified in the notification.

Explanation.—In this clause, "tribal areas" means the territories which, immediately before the 21st day of January, 1972, were included in the tribal areas of Assam as referred to in paragraph 20 of the Sixth Schedule to the Constitution. * * *

(*4*) In relation to the Amindivi Islands, and the East Godavari, West Godavari and Visakhapatnam Agencies in the State of Andhra Pradesh and the Union territory of Lakshadweep, the application of this Code shall be without prejudice to the application of any rule or regulation for the time being in force in such Islands, Agencies or such Union territory, as the case may be, relating to the application of this Code.'.

Amendment of section 2.

3. In section 2 of the principal Act,—

(*i*) in clause (*2*), the words and figures "section 47 or" shall be omitted;

(*ii*) in clause (*17*), in sub-clause (*b*), for the words "the Indian Civil Service", the words "an All-India Service" shall be substituted

Amendment of section 8.

4. In section 8 of the principal Act, for the figures and words "77 and 155 to 158", the figures and word "77, 157 and 158" shall be substituted.

Amendment of section 9.

5. In section 9 of the principal Act, the *Explanation* shall be numbered as *Explanation I*, and after *Explanation I* as so numbered, the following *Explanation* shall be inserted, namely:—

"*Explanation II.*—For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in *Explanation I* or whether or not such office is attached to a particular place.".

Amendment of section 11.

6. In section 11 of the principal Act, after *Explanation VI*, the following *Explanations* shall be inserted, namely:—

"*Explanation VII.*—The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question

arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.—An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as *res judicata* in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.".

* * * * *

Amendment of section 20.

7. In section 20 of the principal Act,—

(*i*) *Explanation I* shall be omitted, and

(*ii*) for the word and figures "*Explanation II*", the word "*Explanation*" shall be substituted.

Amendment of section 21.

8. Section 21 of the principal Act shall be re-numbered as sub-section (*1*) of that section, and, after sub-section (*1*) as so re-numbered, the following sub-sections shall be inserted, namely:—

"(*2*) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(*3*) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice.".

Insertion of new section 21A.

9. After section 21 of the principal Act, the following section shall be inserted, namely:—

Bar on suit to set aside decree on objection as to place of suing.

'21A. No suit shall lie challenging the validity of a decree passed in a former suit between the same parties, or between the parties under whom they or any of them claim, litigating under the same title, on any ground based on an objection as to the place of suing.

Explanation.—The expression "former suit" means a suit which has been decided prior to the decision in the suit in which the validity of the decree is questioned, whether or not the previously decided suit was instituted prior to the suit in which the validity of such decree is questioned.'.

Amendment of section 24.

10. In section 24 of the principal Act,—

(*i*) in sub-section (2), for the words "thereafter tries such suit", the words "is thereafter to try or dispose of such suit or proceeding" shall be substituted;

(*ii*) for sub-section (3), the following sub-section shall be substituted, namely:—

'(3) For the purposes of this section,—

(*a*) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(*b*) "proceeding" includes a proceeding for the execution of a decree or order.';

(*iii*) after sub-section (4), the following sub-section shall be inserted, namely:—

"(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.".

* * * * *

Substitution of new section for section 25.

11. For section 25 of the principal Act, the following section shall be substituted, namely:—

Power of Supreme Court to transfer suits, etc.

"25. (*1*) On the application of a party, and after notice to the parties, and after hearing such of them as desire to be heard, the Supreme Court may, at any stage, if satisfied that an order under this section is expedient for the ends of justice, direct that any suit, appeal or other proceeding be transferred from a High Court or other Civil Court in one State to a High Court or other Civil Court in any other State.

(*2*) Every application under this section shall be made by a motion which shall be supported by an affidavit.

(*3*) The Court to which such suit, appeal or other proceeding is transferred shall, subject to any special directions in the order of transfer, either re-try it or proceed from the stage at which it was transferred to it.

(*4*) In dismissing any application under this section, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum, not exceeding two thousand rupees, as it considers appropriate in the circumstances of the case.

(*5*) The law applicable to any suit, appeal or other proceeding transferred under this section shall be the law which the Court in which the suit, appeal or other proceeding was originally instituted ought to have applied to such suit, appeal or proceeding.".

Amendment of section 28.

12. In section 28 of the principal Act, after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*3*) Where the language of the summons sent for service in another State is different from the language of the record referred to in sub-section (*2*), a translation of the record,—

(*a*) in Hindi, where the language of the Court issuing the summons is Hindi, or

(*b*) in Hindi or English where the language of such record is other than Hindi or English,

shall also be sent together with the record sent under that sub-section.".

Amendment of section 34.

13. To sub-section (*1*) of section 34 of the principal Act, the following proviso and *Explanations* shall be added, namely:—

'Provided that where * * * * * the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent. per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

Explanation I.—In this sub-section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.

5 of 1970.

Explanation II.—For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.'.

Amendment of section 35A.

14. In section 35A of the principal Act,

(*i*) in sub-section (*1*), for the words "excluding an appeal", the words "excluding an appeal or a revision" shall be substituted;

(*ii*) in sub-section (*2*), for the words "one thousand rupees", the words "three thousand rupees" shall be substituted.

Insertion of new section 35B.

15. After section 35A of the principal Act, the following section shall be inserted, namely:—

Costs for causing delay.

"35B. (*1*) If, on any date fixed for the hearing of a suit or for taking any step therein, a party to the suit—

(*a*) fails to take the step which he was required by or under this Code to take on that date, or

(*b*) obtains an adjournment for taking such step or for producing evidence or on any other ground,

the Court may, for reasons to be recorded, make an order requiring such party to pay to the other party such costs as would, in the opinion of the Court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending the Court on that date, and payment of such costs, on the date next following the date of such order, shall be a condition precedent to the further prosecution of—

(*a*) the suit by the plaintiff, where the plaintiff was ordered to pay such costs,

(*b*) the defence by the defendant, where the defendant was ordered to pay such costs.

Explanation.—Where separate defences have been raised by the defendants or groups of defendants, payment of such costs shall be a condition precedent to the further prosecution of the defence by such defendants or groups of defendants as have been ordered by the Court to pay such costs.

(2) The costs, ordered to be paid under sub-section (*1*), shall not, if paid, be included in the costs awarded in the decree passed in the suit; but, if such costs are not paid, a separate order shall be drawn up indicating the amount of such costs and the names and addresses of the persons by whom such costs are payable and the order so drawn up shall be executable against such persons.".

Substitution of new section for section 36.

16. For section 36 of the principal Act, the following section shall be substituted, namely:—

Application to orders.

"36. The provisions of this Code relating to the execution of decrees (including provisions relating to payment under a decree) shall, so far as they are applicable, be deemed to apply to the execution of orders (including payment under an order).".

Amendment of section 37.

17. In section 37 of the principal Act, the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—The Court of first instance does not cease to have jurisdiction to execute a decree merely on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to the jurisdiction of any other Court; but in every such case, such other Court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit.".

Amendment of section 39.

18. In section 39 of the principal Act,—

(*i*) in sub-section (*1*), after the words "to another Court", the words "of competent jurisdiction" shall be inserted;

(*ii*) after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*3*) For the purposes of this section, a Court shall be deemed to be a Court of competent jurisdiction if, at the time of making the application for the transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed.".

Amendment of section 42.

19. Section 42 of the principal Act shall be re-numbered as sub-section (*1*) of that section, and, after sub-section (*1*) as so re-numbered, the following sub-sections shall be inserted, namely:—

"(*2*) Without prejudice to the generality of the provisions of sub-section (*1*), the powers of the Court under that sub-section shall include the following powers of the Court which passed the decree, namely:—

(*a*) power to send the decree for execution to another Court under section 39;

(*b*) power to execute the decree against the legal representative of the deceased judgment-debtor under section 50;

(*c*) power to order attachment of a decree.

(3) A Court passing an order in exercise of the powers specified in sub-section (2) shall send a copy thereof to the Court which passed the decree.

(4) Nothing in this section shall be deemed to confer on the Court to which a decree is sent for execution any of the following powers, namely:—

(a) power to order execution at the instance of the transferee of the decree;

(b) in the case of a decree passed against a firm, power to grant leave to execute such decree against any person, other than such a person as is referred to in clause (b), or clause (c), of sub-rule (1) of rule 50 of Order XXI.".

Amendment of section 47.

20. In section 47 of the principal Act, for the *Explanation*, the following *Explanations* shall be substituted, namely:—

"*Explanation I.*—For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.—(a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.".

Amendment of section 51.

21. In section 51 of the principal Act, in clause (c), the words and figures "for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section," shall be inserted at the end.

* * * *

Amendment of section 58.

22. In section 58 of the principal Act,—

(i) in sub-section (1),—

(a) in clause (a), for the words "fifty rupees, for a period of six months, and,", the words "one thousand rupees, for a period not exceeding three months, and," shall be substituted;

(b) for clause (b), the following clause shall be substituted, namely:—

"(b) where the decree is for the payment of a sum of money exceeding five hundred rupees, but not exceeding one thousand rupees, for a period not exceeding six weeks:";

(c) in the first proviso, for the words "said period of six months or six weeks, as the case may be,", the words "said period of detention" shall be substituted;

(ii) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) For the removal of doubts, it is hereby declared that no order for detention of the judgment-debtor in civil prison in execution of a decree for the payment of money shall be made, where the total amount of the decree does not exceed five hundred rupees.".

Amend-ment of Section 60.

23. In section 60 of the principal Act,—

(*i*) in the proviso to sub-section (*1*),—

(*a*) in clause (*c*), for the words "an agriculturist", the words "an agriculturist or a labourer or a domestic servant" shall be substituted;

(*b*) in clause (*g*), after the words "pensioners of the Government", the words "or of a local authority or of any other employer" shall be inserted;

(c) in clause (*i*),—

(*i*) for the words "two hundred rupees and one-half the remainder", the words "four hundred rupees and two-thirds of the remainder" shall be substituted;

(*ii*) for the proviso, the following proviso shall be substituted, namely:—

"Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty-four months, be finally exempt from attachment in execution of that decree.";

(*d*) for clause (*j*), the following clause shall be substituted, namely:—

"(*j*) the pay and allowances of persons to whom the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957, applies;"; 45 of 1950. 46 of 1950. 62 of 1957.

(*e*) after clause (*k*), the following clauses shall be inserted, namely:—

"(*ka*) all deposits and other sums in or derived from any fund to which the Public Provident Fund Act, 1968, for the time being applies, in so far as they are declared by the said Act as not to be liable to attachment; 23 of 1968.

(*kb*) all moneys payable under a policy of insurance on the life of the judgment-debtor;

(*kc*) the interest of a lessee of a residential building to which the provisions of law for the time being in force relating to control of rents and accommodation apply;";

(*f*) for *Explanation I*, the following *Explanation* shall be substituted, namely:—

"*Explanation* I.—The moneys payable in relation to the matters mentioned in clauses (*g*), (*h*), (*i*), (*ia*), (*j*), (*l*) and (*o*) are exempt from attachment or sale, whether before or after they are actually payable, and, in the case of salary, the attachable portion thereof is liable to attachment, whether before or after it is actually payable.";

(*g*) in *Explanation 2*, for the words, figure, brackets and letters "*Explanation 2.*—In clauses (*h*) and (*i*)", the words, figures, brackets and letters, "*Explanation II.*—In clauses (*i*) and (*ia*)" shall be substituted;

(*h*) in *Explanation 3*, for the figure "3", the figures "*III*" shall be substituted;

(*i*) after *Explanation III* as so amended, the following *Explanations* shall be inserted, namely:—

'*Explanation IV.*—For the purposes of this proviso, "wages" includes bonus, and "labourer" includes a skilled, unskilled or semi-skilled labourer.

Explanation V.—For the purposes of this proviso, the expression "agriculturist" means a person who cultivates land personally and who depends for his livelihood mainly on the income from agricultural land, whether as owner, tenant, partner or agricultural labourer.

Explanation VI.—For the purposes of *Explanation V*, an agriculturist shall be deemed to cultivate land personally, if he cultivates land—

(*a*) by his own labour, or

(*b*) by the labour of any member of his family, or

(*c*) by servants or labourers on wages payable in cash or in kind (not being as a share of the produce), or both.';

(*ii*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) Notwithstanding anything contained in any other law for the time being in force, an agreement by which a person agrees to waive the benefit of any exemption under this section shall be void.".

Amendment of section 63.

24. In section 63 of the principal Act, after sub-section (2), the following *Explanation* shall be inserted, namely:—

'*Explanation.*—For the purposes of sub-section (2), "proceeding taken by a Court" does not include an order allowing, to a decree-holder who has purchased property at a sale held in execution of a decree, set off to the extent of the purchase price payable by him.'.

Amendment of section 66.

25. In section 66 of the principal Act, in sub-section (*1*), the following shall be inserted at the end, namely:—

"and in any suit by a person claiming title under a purchase so certified, the defendant shall not be allowed to plead that the purchase was made on his behalf or on behalf of someone through whom the defendant claims.".

Amendment of section 75.

26. In section 75 of the principal Act, after clause (*d*), the following clauses shall be inserted, namely:—

"(*e*) to hold a scientific, technical, or expert investigation;

(*f*) to conduct sale of property which is subject to speedy and natural decay and which is in the custody of the Court pending the determination of the suit;

(*g*) to perform any ministerial act;".

Amendment of section 80.

27. Section 80 of the principal Act shall be re-numbered as sub-section (*1*) thereof, and—

(*a*) in sub-section (*1*) as so re-numbered, for the words "No suit shall be instituted", the words, brackets and figure "Save as otherwise provided in sub-section (*2*), no suit shall be instituted" shall be substituted; and

(*b*) after sub-section (*1*) as so re-numbered, the following sub-sections shall be inserted, namely:—

"(*2*) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (*1*); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (*1*).

(*3*) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by reason of any error or defect in the notice referred to in sub-section (*1*), if in such notice—

(*a*) the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in sub-section (*1*), and

(*b*) the cause of action and the relief claimed by the plaintiff had been substantially indicated.".

Amendment of Section 82.

28. In section 82 of the principal Act,—

(*i*) for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) Where, in a suit by or against the Government or by or against a public officer in respect of any act purporting to be done by him in his official capacity, a decree is passed against the Union of India or a State or, as the case may be, the public officer, such decree shall not be executed except in accordance with the provisions of sub-section (*2*).";

(*ii*) in sub-section (2), for the words "such report", the words "such decree" shall be substituted.

* * * * * *

Amendment of section 86.

29. In section 86 of the principal Act,—

(*i*) in sub-section (*1*),—

(*a*) the words "Ruler of a" shall be omitted;

(*b*) in the proviso, for the words "a Ruler", the words "a foreign State" shall be substituted;

(*ii*) in sub-section (*2*),—

(*a*) for the words "the Ruler", wherever they occur, the words "the foreign State" shall be substituted;

(*b*) in clause (*a*), for the word "him", the word "it" shall be substituted;

(*c*) in clause (*b*), for the word "himself", the word "itself" shall be substituted;

(*d*) in clause (*d*), for the word "him", the word "it" shall be substituted;

(*iii*) for sub-section (*3*), the following sub-section shall be substituted, namely:—

"(*3*) Except with the consent of the Central Government, certified in writing by a Secretary to that Government, no decree shall be executed against the property of any foreign State.";

(*iv*) in sub-section (*4*),—

(*a*) clause (*a*) shall be re-lettered as clause (*aa*), and before clause (*aa*) as so re-lettered, the following clause shall be inserted, namely:—

"(*a*) any Ruler of a foreign State;";

(*b*) in clause (*c*), for the words "or retinue of the Ruler, Ambassador", the words "of the foreign State or the staff or retinue of the Ambassador" shall be substituted;

(*c*) for the words "as they apply in relation to the Ruler of a foreign State", the words "as they apply in relation to a foreign State" shall be substituted;

(*v*) after sub-section (*4*), the following sub-sections shall be inserted, namely:—

"(*5*) The following persons shall not be arrested under this Code, namely:—

(*a*) any Ruler of a foreign State;

(b) any Ambassador or Envoy of a foreign State;

(*c*) any High Commissioner of a Commonwealth country;

(*d*) any such member of the staff of the foreign State or the staff or retinue of the Ruler, Ambassador or Envoy of a foreign State or of the High Commissioner of a Commonwealth country, as the Central Government may, by general or special order, specify in this behalf.

(*6*) Where a request is made to the Central Government for the grant of any consent referred to in sub-section (*1*), the Central Government shall, before refusing to accede to the request in whole or in part, give to the person making the request a reasonable opportunity of being heard.".

Amendment of section 91.

30. In section 91 of the principal Act,—

(*i*) for the heading, the following heading shall be substituted, namely:—

"PUBLIC NUISANCES AND OTHER WRONGFUL ACTS AFFECTING THE PUBLIC",

(*ii*) for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) In the case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted,—

(*a*) by the Advocate-General, or

(*b*) with the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.".

Amendment of section 92.

31. In section 92 of the principal Act,—

(*i*) in sub-section (*1*), for the words "consent in writing of the Advocate-General,", the words "leave of the Court," shall be substituted;

(*ii*) after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*3*) The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied *cy pres* in one or more of the following circumstances, namely:—

(*a*) where the original purposes of the trust, in whole or in part,—

(*i*) have been, as far as may be, fulfilled; or

(*ii*) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or

(*b*) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or

(*c*) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or

(*d*) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or

(*e*) where the original purposes, in whole or in part, have, since they were laid down,—

(*i*) been adequately provided for by other means, or

(*ii*) ceased, as being useless or harmful to the community, or

(*iii*) ceased to be, in law, charitable, or

(*iv*) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.".

Amendment of section 95.

32. In section 95 of the principal Act, in sub-section (*1*), for the words "expense or injury caused to him", the words and brackets "expense or injury (including injury to reputation) caused to him" shall be substituted.

Amendment of section 96.

33. In section 96 of the principal Act, * * * after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognisable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed three thousand rupees.".

* * * * *

Amendment of section 98.

34. In section 98 of the principal Act, in sub-section (*2*), in the proviso, for the words "composed of two Judges belonging to a Court consisting of more than two Judges", the words "composed of two or other even number of Judges belonging to a Court consisting of more Judges than those constituting the Bench" shall be substituted.

Amendment of section 99.

35. In section 99 of the principal Act,—

(*i*) after the words "any misjoinder", the words "or non-joinder" shall be inserted;

(*ii*) the following proviso shall be added at the end, namely:—

"Provided that nothing in this section shall apply to non-joinder of a necessary party.".

Insertion of new section 99A.

36. After section 99 of the principal Act, the following section shall be inserted, namely:—

No order under section 47 to be reversed or modified unless decision of the case is prejudicially affected

"99A. Without prejudice to the generality of the provisions of section 99, no order under section 47 shall be reversed or substantially varied, on account of any error, defect or irregularity in any proceeding relating to such order, unless such error, defect or irregularity has prejudicially affected the decision of the case.".

Substitution of new section for section 100.

37. For section 100 of the principal Act, the following section shall be substituted, namely:—

Second appeal.

"100. (*1*) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(*2*) An appeal may lie under this section from an appellate decree passed *ex parte*.

(*3*) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(*4*) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(*5*) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.".

Insertion of new section 100A.

38. After section 100 of the principal Act, the following section shall be inserted, namely:—

"100A. Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force, where any appeal from an appellate decree or order is heard and decided by a single Judge of a High Court, no further appeal shall lie from the judgment, decision or order of such single Judge in such appeal or from any decree passed in such appeal.". No further appeal in certain cases.

39. In section 102 of the principal Act, for the words "one thousand rupees", the words "three thousand rupees" shall be substituted. Amendment of section 102.

40. For section 103 of the principal Act, the following section shall be substituted, namely:— Substitution of new section for section 103.

"103. In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue *** necessary for the disposal of the appeal,— Power of High Court to determine issue of fact.

(*a*) which has not been determined by the lower Appellate Court or both by the Court of first instance and the lower Appellate Court, or

(*b*) which has been wrongly determined by such Court or Courts by reason of a decision on such question of law as is referred to in section 100.".

41. In section 104 of the principal Act, in sub-section (*1*), after clause (*ff*), the following clause shall be inserted, namely:— Amendment of section 104.

"(*ffa*) an order under section 91 or section 92 refusing leave to institute a suit of the nature referred to in section 91 or section 92, as the case may be;".

42. In section 105 of the principal Act, in sub-section (*2*), the words "made after the commencement of this Code" shall be omitted. Amendment of section 105.

43. Section 115 of the principal Act shall be re-numbered as sub-section (*1*) thereof, and— Amendment of section 115

(*a*) to sub-section (*1*) as so re-numbered, the following proviso shall be added, namely:—

"Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where—

(*a*) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or

(*b*) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.";

(*b*) after sub-section (*1*) as so re-numbered, the following sub-section and *Explanation* shall be inserted, namely:—

"(*2*) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

Explanation.—In this section, the expression "any case which has been decided" includes any order made, or any order deciding an issue, in the course of a suit or other proceeding.".

Amendment of section 123.

44. In section 123 of the principal Act,—

(*i*) in sub-sections (*3*), (*4*) and (*5*), for the words "Chief Justice or Chief Judge", wherever they occur, the words "High Court" shall, subject to such grammatical variations as may be necessary, be substituted;

(*ii*) in sub-section (*3*), the proviso shall be omitted.

* * * * *

Amendment of section 135A.

45. In section 135A of the principal Act, for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) No person shall be liable to arrest or detention in prison under civil process—

(*a*) if he is a member of—

(*i*) either House of Parliament, or

(*ii*) the Legislative Assembly or Legislative Council of a State, or

(*iii*) a Legislative Assembly of a Union territory,

during the continuance of any meeting of such House of Parliament or, as the case may be, of the Legislative Assembly or the Legislative Council;

(*b*) if he is a member of any committee of—

(*i*) either House of Parliament, or

(*ii*) the Legislative Assembly of a State or Union territory, or

(*iii*) the Legislative Council of a State,

during the continuance of any meeting of such committee;

(*c*) if he is a member of—

(*i*) either House of Parliament, or

(*ii*) a Legislative Assembly or Legislative Council of a State having both such Houses,

during the continuance of a joint sitting, meeting, conference or joint committee of the Houses of Parliament or Houses of the State Legislature, as the case may be;

and during the forty days before and after such meeting, sitting or conference.".

Amendment of section 139.

46. In section 139 of the principal Act, after clause (*a*), the following clause shall be inserted, namely:—

53 of 1952.

"(*aa*) any notary appointed under the Notaries Act, 1952; or".

Amendment of section 141.

47. In section 141 of the principal Act, the following *Explanation* shall be inserted, namely:—

'*Explanation.*—In this section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceeding under article 226 of the Constitution.'.

Amendment of section 144.

48. In section 144 of the principal Act,—

(*i*) in sub-section (*1*),—

(*a*) for the words "varied or reversed, the Court of first instance", the words "varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order" shall be substituted;

(*b*) for the words "such part thereof as has been varied or reversed", the words "such part thereof as has been varied, reversed, set aside or modified" shall be substituted;

(*c*) for the words "consequential on such variation or reversal", the words "consequential on such variation, reversal, setting aside or modification of the decree or order" shall be substituted;

(*ii*) in sub-section (*1*), the following *Explanation* shall be inserted, namely:—

'*Explanation.*—For the purposes of sub-section (*1*), the expression "Court which passed the decree or order" shall be deemed to include,—

(*a*) where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance;

(*b*) where the decree or order has been set aside by a separate suit, the Court of first instance which passed such decree or order;

(*c*) where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute it, the Court which, if the suit wherein the decree or order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.'.

Amendment of section 145.

49. In section 145 of the principal Act,—

(*i*) for the words "has become liable as surety", the words "has furnished security or given a guarantee" shall be substituted;

(*ii*) for the portion beginning with the words "the decree or order may be executed against him", and ending with the words and

figures "within the meaning of section 47:", the following shall be substituted, namely:—

"the decree or order may be executed in the manner herein provided for the execution of decrees, namely:—

(*i*) if he has rendered himself personally liable, against him to that extent;

(*ii*) if he has furnished any property as security, by sale of such property to the extent of the security;

(*iii*) if the case falls both under clauses (*i*) and (*ii*), then to the extent specified in those clauses,

and such person shall be deemed to be a party within the meaning of section 47:".

Insertion of new section 148A.

50. After section 148 of the principal Act, the following section shall be inserted, namely:—

Right to lodge a caveat.

"148A. (*1*) Where an application is expected to be made, or has been made, in a suit or proceeding instituted, or about to be instituted, in a Court, any person claiming a right to appear before the Court on the hearing of such application may lodge a caveat in respect thereof.

(*2*) Where a caveat has been lodged under sub-section (*1*), the person by whom the caveat has been lodged (hereinafter referred to as the caveator) shall serve a notice of the caveat by registered post, acknowledgment due, on the person by whom the application has been, or is expected to be, made, under sub-section (*1*).

(*3*) Where, after a caveat has been lodged under sub-section (*1*), any application is filed in any suit or proceeding, the Court shall serve a notice of the application on the caveator.

(*4*) Where a notice of any caveat has been served on the applicant, he shall forthwith furnish the caveator, at the caveator's expense, with a copy of the application made by him and also with copies of any paper or document which has been, or may be, filed by him in support of the application.

(*5*) Where a caveat has been lodged under sub-section (*1*), such caveat shall not remain in force after the expiry of ninety days from the date on which it was lodged unless the application referred to in sub-section (*1*) has been made before the expiry of the said period.".

Insertion of new sections 153A and 153B.

51. After section 153 of the principal Act, the following sections shall be inserted, namely:—

"153A. Where an Appellate Court dismisses an appeal under rule 11 of Order XLI, the power of the Court to amend, under section 152, the decree or order appealed against may be exercised by the Court which had passed the decree or order in the first instance, notwithstanding that the dismissal of the appeal has the effect of confirming the decree or order, as the case may be, passed by the Court of first instance.

Power to amend decree or order where appeal is summarily dismissed.

153B. The place in which any Civil Court is held for the purpose of trying any suit shall be deemed to be an open Court, to which the public generally may have access so far as the same can conveniently contain them:

Place of trial to be deemed to be open Court.

Provided that the presiding Judge may, if he thinks fit, order at any stage of any inquiry into or trial of any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.".

CHAPTER III

AMENDMENT OF THE ORDERS

Amendment of Order I.

52. In the First Schedule to the principal Act (hereinafter referred to as the First Schedule), in Order I,—

(*i*) for rule 1, the following rule shall be substituted, namely:—

Who may be joined as plaintiffs.

"1. All persons may be joined in one suit as plaintiffs where—

(*a*) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and

(*b*) if such persons brought separate suits, any common question of law or fact would arise.";

(*ii*) for rule 3, the following rule shall be substituted, namely:—

Who may be joined as defendants.

"3. All persons may be joined in one suit as defendants where—

(*a*) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and

(*b*) if separate suits were brought against such persons, any common question of law or fact would arise.";

(*iii*) after rule 3, the following rule shall be inserted, namely:—

Power to order separate trials where joinder of defendants may embarrass or delay trial.

"3A. Where it appears to the Court that any joinder of defendants may embarrass or delay the trial of the suit, the Court may order separate trials or make such other order as may be expedient in the interests of justice.";

(*iv*) for rule 8, the following rule shall be substituted, namely:—

One person may sue or defend on behalf of all in same interest.

"8. (*1*) Where there are numerous persons having the same interest in one suit,—

(*a*) one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;

(*b*) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

(*2*) The Court shall, in every case where a permission or direction is given under sub-rule (*1*), at the plaintiff's expense, give notice of the institution of the suit to all persons so interested, either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

(*3*) Any person on whose behalf, or for whose benefit, a suit is instituted, or defended, under sub-rule (*1*), may apply to the Court to be made a party to such suit.

(*4*) No part of the claim in any such suit shall be abandoned under sub-rule (*1*), and no such suit shall be withdrawn under sub-rule (*3*), of rule 1 of Order XXIII, and no agreement, compromise or satisfaction shall be recorded in any such suit under rule 3 of that Order, unless the Court has given, at the plaintiff's expense, notice to all persons so interested in the manner specified in sub-rule (*2*).

(*5*) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the Court may substitute in his place any other person having the same interest in the suit.

(*6*) A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted, or defended, as the case may be.

Explanation.—For the purpose of determining whether the persons who sue or are sued, or defend, have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the persons on whose behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be.";

(*v*) after rule 8, the following rule shall be inserted, namely:—

Power of Court to permit a person or body of persons to present opinion or to take part in the proceedings.

"8A. While trying a suit, the Court may, if satisfied that a person or body of persons is interested in any question of law which is directly and substantially in issue in the suit and that it is necessary in the public interest to allow that person or body of persons to present his or its opinion on that question of law, permit that person or body of persons to present such opinion and to take such part in the proceedings of the suit as the Court may specify.";

(*vi*) to rule 9, the following proviso shall be added, namely:—

"Provided that nothing in this rule shall apply to non-joinder of a necessary party.";

(*vii*) after rule 10, the following rule shall be inserted, namely:—

"10A. The Court may, in its discretion, request any pleader to address it as to any interest which is likely to be affected by its decision on any matter in issue in any suit or proceeding, if the party having the interest which is likely to be so affected is not represented by any pleader."; Power of Court to request any pleader to address it.

(*viii*) in rule 11, for the words "the suit", the words "a suit" shall be substituted.

53. In the First Schedule, in Order II, for rule 6, the following rule shall be substituted, namely:— Amendment of Order II.

"6. Where it appears to the Court that the joinder of causes of action in one suit may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient in the interests of justice.". Power of Court to order separate trials.

54. In the First Schedule, in Order III,— Amendment of Order III.

(*i*) in rule 4,—

(*a*) in sub-rule (2),—

(*i*) for the words "filed in Court and shall be", the words, brackets and figure "filed in Court and shall, for the purposes of sub-rule (*1*), be" shall be substituted;

(*ii*) the following *Explanation* shall be inserted at the end, namely:—

"*Explanation*.—For the purposes of this sub-rule, the following shall be deemed to be proceedings in the suit,—

(*a*) an application for the review of decree or order in the suit,

(*b*) an application under section 144 or under section 152 of this Code, in relation to any decree or order made in the suit,

(c) an appeal from any decree or order in the suit, and

(*d*) any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the suit or of obtaining refund of moneys paid into the Court in connection with the suit.";

(*b*) for sub-rule (*3*), the following sub-rule shall be substituted, namely:—

"(*3*) Nothing in sub-rule (*2*) shall be construed—

(*a*) as extending, as between the pleader and his client, the duration for which the pleader is engaged, or

(*b*) as authorising service on the pleader of any notice or document issued by any Court other than the Court for which the pleader was engaged, except where such service was expressly agreed to by the client in the document referred to in sub-rule (*1*).";

(*ii*) in rule 5, for the words "Any process served on the pleader of any party", the words "Any process served on the pleader who has been duly appointed to act in Court for any party" shall be substituted;

(*iii*) in rule 6, after sub-rule (*2*), the following sub-rule shall be inserted, namely:—

"(*3*) The Court may, at any stage of the suit, order any party to the suit not having a recognised agent residing within the jurisdiction of the Court, or a pleader who has been duly appointed to act in the Court on his behalf, to appoint, within a specified time, an agent residing within the jurisdiction of the Court to accept service of the process on his behalf.".

Amendment of Order V.

55. In the First Schedule, in Order V,—

(*i*) in rule 1, in sub-rule (*1*), after the proviso, the following further proviso shall be inserted, namely:—

"Provided further that where a summons has been issued, * * * the Court may direct the defendant to file the written statement of his defence, if any, on the date of his appearance and cause an entry to be made to that effect in the summons.";

(*ii*) for rule 15, the following rule shall be substituted, namely:—

Where service may be on an adult member of defendant's family.

"15. Where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him.

Explanation.—A servant is not a member of the family within the meaning of this rule.";

(*iii*) in rule 17, after the words "or where the serving officer, after using all due and reasonable diligence, cannot find the defendant", the words "who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time", shall be inserted;

(*iv*) after rule 19, the following rule shall be inserted, namely:—

"19A. (*1*) The Court shall, in addition to, and simultaneously with, the issue of summons for service in the manner provided in rules 9 to 19 (both inclusive), also direct the summons to be served by registered post, acknowledgment due, addressed to the defendant, or his agent empowered to accept the service, at the place where the defendant, or his agent, actually and voluntarily resides or carries on business or personally works for gain: Simultaneous issue of summons for service by post in addition to personal service

Provided that nothing in this sub-rule shall require the Court to issue a summons for service by registered post, where, in the circumstances of the case, the Court considers it unnecessary.

(*2*) When an acknowledgment purporting to be signed by the defendant or his agent is received by the Court or the postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons, when tendered to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant:

Provided that where the summons was properly addressed, prepaid and duly sent by registered post, acknowledgment due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgment having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of the issue of the summons.";

(*v*) in rule 20, after sub-rule (*1*), the following sub-rule shall be inserted, namely:—

"(*1A*) Where the Court acting under sub-rule (*1*) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain.";

(*vi*) rule 20A shall be omitted;

(*vii*) in rule 25,—

(*a*) in the first proviso, for the words "resides in Pakistan,", the words "resides in Bangladesh or Pakistan," shall be substituted;

(*b*) in the second proviso, for the words and brackets "in Pakistan (not belonging to the Pakistan military, naval or air forces)", the words and brackets "in Bangladesh or Pakistan (not belonging to the Bangladesh or, as the case may be, Pakistan military, naval or air forces)" shall be substituted,

(*viii*) for rule 26, the following rules shall be substituted, namely:—

Service in foreign territory through Political Agent or Court.

"26. Where—

(*a*) in the exercise of any foreign jurisdiction vested in the Central Government, a Political Agent has been appointed, or a Court has been established or continued, with power to serve a summons, issued by a Court under this Code, in any foreign territory in which the defendant actually and voluntarily resides, carries on business or personally works for gain, or

(*b*) the Central Government has, by notification in the Official Gazette, declared, in respect of any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid, that service by such Court of any summons issued by a Court under this Code shall be deemed to be valid service,

the summons may be sent to such Political Agent or Court, by post, or otherwise, or if so directed by the Central Government, through the Ministry of that Government dealing with foreign affairs, or in such other manner as may be specified by the Central Government for the purpose of being served upon the defendant; and, if the Political Agent or Court returns the summons with an endorsement purporting to have been made by such Political Agent or by the Judge or other officer of the Court to the effect that the summons has been served on the defendant in the manner hereinbefore directed, such endorsement shall be deemed to be evidence of service.

Summonses to be sent to officers of foreign countries.

26A. Where the Central Government has, by notification in the Official Gazette, declared in respect of any foreign territory that summonses to be served on defendants actually and voluntarily residing or carrying on business or personally working for gain in that foreign territory may be sent to an officer of the Government of the foreign territory specified by the Central Government, the summonses may be sent to such officer, through the Ministry of the Government of India dealing with foreign affairs or in such other manner as may be specified by the Central Government; and if such officer returns any such summons with an endorsement purporting to have been made by him that the summons has been served on the defendant, such endorsement shall be deemed to be evidence of service.".

Amendment of Order VI.

56. In the First Schedule, in Order VI,—

(*i*) for rule 2, the following rule shall be substituted, namely:—

Pleading to state material facts and not evidence.

"2. (*1*) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

(*2*) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.

(*3*) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.";

(*ii*) after rule 14, the following rule shall be inserted, namely:—

'14A. (*1*) Every pleading, when filed by a party, shall be accompanied by a statement in the prescribed form, signed as provided in rule 14, regarding the address of the party. Address for service of notice

(*2*) Such address may, from time to time, be changed by lodging in Court a form duly filled up and stating the new address of the party and accompanied by a verified petition.

(*3*) The address furnished in the statement made under sub-rule (*1*) shall be called the "registered address" of the party, and shall, until duly changed as aforesaid, be deemed to be the address of the party for the purpose of service of all processes in the suit or in any appeal from any decree or order therein made and for the purpose of execution, and shall hold good, subject as aforesaid, for a period of two years after the final determination of the cause or matter.

(*4*) Service of any process may be effected upon a party at his registered address in all respects as though such party resided thereat.

(*5*) Where the registered address of a party is discovered by the Court to be incomplete, false or fictitious, the Court may, either on its own motion, or on the application of any party, order—

(*a*) in the case where such registered address was furnished by a plaintiff, stay of the suit, or

(*b*) in the case where such registered address was furnished by a defendant, his defence be struck out and he be placed in the same position as if he had not put up any defence.

(*6*) Where a suit is stayed or a defence is struck out under sub-rule (*5*), the plaintiff or, as the case may be, the defendant may, after furnishing his true address, apply to the Court for an order to set aside the order of stay or, as the case may be, the order striking out the defence.

(*7*) The Court, if satisfied that the party was prevented by any sufficient cause from filing the true address at the proper time, shall set aside the order of stay or order striking out the defence, on such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit or defence, as the case may be.

(*8*) Nothing in this rule shall prevent the Court from directing the service of a process at any other address, if, for any reason, it thinks fit to do so.';

(*iii*) for rule 16, the following rule shall be substituted, namely:—

"16. The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading— Striking out pleadings.

(*a*) which may be unnecessary, scandalous, frivolous or vexatious, or

(*b*) which may tend to prejudice, embarrass or delay the fair trial of the suit; or

(*c*) which is otherwise an abuse of the process of the Court.".

* * * *

Amendment of Order VII.

57. In the First Schedule, in Order VII,—

(*i*) in rule 2, for the words "the plaint shall state approximately the amount sued for", the words "or for movables in the possession of the defendant, or for debts of which the value he cannot, after the exercise of reasonable diligence, estimate, the plaint shall state approximately the amount or value sued for" shall be substituted;

(*ii*) to rule 6, the following proviso shall be added, namely:—

"Provided that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.";

(*iii*) in sub-rule (*1*) of rule 9, for the words "shall present as many copies", the words "shall present, within such time as may be fixed by the Court or extended by it from time to time, as many copies" shall be substituted;

(*iv*) after sub-rule (*1*) of rule 9, the following sub-rule shall be inserted, namely:—

"(*1A*) The plaintiff shall, within the time fixed by the Court or extended by it under sub-rule (*1*), pay the requisite fee for the service of summons on the defendants.";

(*v*) in sub-rule (*1*) of rule 10, the following *Explanation* shall be inserted at the end, namely: —

"*Explanation.*—For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.";

(*vi*) in rule 10, for the words "The plaint shall", the words, figures and letter "Subject to the provisions of rule 10A, the plaint shall" shall be substituted;

(*vii*) after rule 10, the following rules shall be inserted, namely:—

Power of Court to fix a date of appearance in the Court where plaint is to be filed after its return.

"10A. (*1*) Where, in any suit, after the defendant has appeared, the Court is of opinion that the plaint should be returned, it shall, before doing so, intimate its decision to the plaintiff.

(2) Where an intimation is given to the plaintiff under sub-rule (*1*), the plaintiff may make an application to the Court—

(*a*) specifying the Court in which he proposes to present the plaint after its return,

(*b*) praying that the Court may fix a date for the appearance of the parties in the said Court, and

(*c*) requesting that the notice of the date so fixed may be given to him and to the defendant.

(3) Where an application is made by the plaintiff under sub-rule (2), the Court shall, before returning the plaint and notwithstanding that the order for return of plaint was made by it on the ground that it has no jurisdiction to try the suit,—

(a) fix a date for the appearance of the parties in the Court in which the plaint is proposed to be presented, and

(b) give to the plaintiff and to the defendant notice of such date for appearance.

(4) Where the notice of the date for appearance is given under sub-rule (3),—

(a) it shall not be necessary for the Court in which the plaint is presented after its return, to serve the defendant with a summons for appearance in the suit, unless that Court, for reasons to be recorded, otherwise directs, and

(b) the said notice shall be deemed to be a summons for the appearance of the defendant in the Court in which the plaint is presented on the date so fixed by the Court by which the plaint was returned.

(5) Where the application made by the plaintiff under sub-rule (2) is allowed by the Court, the plaintiff shall not be entitled to appeal against the order returning the plaint.

Power of appellate Court to transfer suit to the proper Court.

10B. (1) Where, on an appeal against an order for the return of plaint, the Court hearing the appeal confirms such order, the Court of appeal may, if the plaintiff by an application so desires, while returning the plaint, direct plaintiff to file the plaint, subject to the provisions of the Limitation Act, 1963, in the Court in which the suit should have been instituted (whether such Court is within or without the State in which the Court hearing the appeal is situated), and fix a date for the appearance of the parties in the Court in which the plaint is directed to be filed and when the date is so fixed it shall not be necessary for the Court in which the plaint is filed to serve the defendant with the summons for appearance in the suit, unless that Court in which the plaint is filed, for reasons to be recorded, otherwise directs.

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(2) The direction made by the Court under sub-rule (1) shall be without any prejudice to the rights of the parties to question the jurisdiction of the Court, in which the plaint is filed, to try the suit.";

(*viii*) to rule 11, the following proviso shall be added, namely:—

"Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.".

Amend-ment of Order VIII.

58. In the First Schedule, in Order VIII,—

(*i*) for the heading "WRITTEN STATEMENT AND SET-OFF", the heading "WRITTEN STATEMENT, SET-OFF AND COUNTER-CLAIM" shall be substituted;

(*ii*) rule 1 shall be re-numbered as sub-rule (*1*) of that rule, and—

(*a*) in sub-rule (*1*) as so re-numbered, the words "may, and, if so required by the Court," shall be omitted;

(*b*) after sub-rule (*1*) as so re-numbered, the following sub-rules shall be inserted, namely:—

"(2) Save as otherwise provided in rule 8A, where the defendant relies on any document (whether or not in his possession or power) in support of his defence or claim for set-off or counter-claim, he shall enter such documents in a list, and shall,—

(*a*) if a written statement is presented, annex the list to the written statement:

Provided that where the defendant, in his written statement, claims a set-off or makes a counter-claim based on a document in his possession or power, he shall produce it in Court at the time of presentation of the written statement and shall at the same time deliver the document or copy thereof to be filed with the written statement;

(*b*) if a written statement is not presented, present the list to the Court at the first hearing of the suit.

(3) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(4) If no such list is so annexed or presented, the defendant shall be allowed such further period for the purpose as the Court may think fit.

(5) A document which ought to be entered in the list referred to in sub-rule (2), and which is not so entered, shall not, without the leave of the Court, be received in evidence on behalf of the defendant at the hearing of the suit.

(6) Nothing in sub-rule (5) shall apply to documents produced for the cross-examination of plaintiff's witnesses or in answer to any case set up by the plaintiff subsequent to the filing of the plaint, or handed over to a witness merely to refresh his memory.

(7) Where a Court grants leave under sub-rule (5), it shall record its reasons for so doing, and no such leave shall be granted unless good cause is shown to the satisfaction of the Court for the non-entry of the document in the list referred to in sub-rule (2).";

(*iii*) rule 5 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*) as so re-numbered, the following sub-rules shall be inserted, namely:—

"(*2*) Where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.

(*3*) In exercising its discretion under the proviso to sub-rule (*1*) or under sub-rule (*2*), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(*4*) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced.";

(*iv*) after rule 6, the following rules shall be inserted, namely:—

Counter-claim by defendant.

"6A. (*1*) A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not:

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(*2*) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

(*3*) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.

(*4*) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.

Counter-claim to be stated.

6B. Where any defendant seeks to rely upon any ground as supporting a right of counter-claim, he shall, in his written statement, state specifically that he does so by way of counter-claim.

Exclusion of counter-claim.

6C. Where a defendant sets up a counter-claim and the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent suit, the plaintiff may, at any time before issues are settled in relation to the counter-claim, apply to the Court for an order that such counter-claim may be excluded, and the Court may, on the hearing of such application make such order as it thinks fit.

Effect of discontinuance of suit.

6D. If in any case in which the defendant sets up a counter-claim, the suit of the plaintiff is stayed, discontinued or dismissed, the counter-claim may nevertheless be proceeded with.

Default of plaintiff to reply to counter-claim.

6E. If the plaintiff makes default in putting in a reply to the counter-claim made by the defendant, the Court may pronounce judgment against the plaintiff in relation to the counter-claim made against him, or make such order in relation to the counter-claim as it thinks fit.

Relief to defendant where counter-claim succeeds.

6F. Where in any suit a set-off or counter-claim is established as a defence against the plaintiff's claim, and any balance is found due to the plaintiff or the defendant, as the case may be, the Court may give judgment to the party entitled to such balance.

Rules relating to written statement to apply.

6G. The rules relating to a written statement by a defendant shall apply to a written statement filed in answer to a counter-claim.";

(*v*) in rule 7, after the word "set-off", the words "or counter-claim" shall be inserted;

(*vi*) in rule 8, after the word "set-off", the words "or counter-claim" shall be inserted;

(*vii*) after rule 8, the following rule shall be inserted, namely:—

Duty of defendant to produce documents upon which relief is claimed by him.

"8A. (*1*) Where a defendant bases his defence upon a document in his possession or power, he shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document or a copy thereof, to be filed with the written statement.

(2) A document which ought to be produced in Court by the defendant under this rule, but is not so produced, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(3) Nothing in this rule shall apply to documents produced,—

(*a*) for the cross-examination of the plaintiff's witnesses, or

(*b*) in answer to any case set up by the plaintiff subsequent to the filing of the plaint, or

(*c*) handed over to a witness merely to refresh his memory.";

(*viii*) in rule 9, after the word "set-off", the words "or counter-claim" shall be inserted;

(*ix*) in rule 10,—

(*a*) for the words "is so required", the words and figures "is required under rule 1 or rule 9" shall be substituted;

(*b*) for the words "fixed by the Court, the Court may", the words "permitted or fixed by the Court, as the case may be, the Court shall" shall be substituted;

(*c*) the words "and on the pronouncement of such judgment, a decree shall be drawn up" shall be inserted at the end.

Amendment of Order IX.

59. In the First Schedule, in Order IX,—

(*i*) in rule 2,—

(*a*) after the words "chargeable for such service,", the words and figures "or to present copies of the plaint or concise statements, as required by rule 9 of Order VII," shall be inserted;

(*b*) for the proviso, the following proviso shall be substituted, namely:—

"Provided that no such order shall be made, if, notwithstanding such failure, the defendant attends in person (or by agent when he is allowed to appear by agent) on the day fixed for him to appear and answer.";

(*ii*) in rule 4, for the words and brackets "his not paying the Court-fee and postal charges (if any) required within the time fixed before the issue of the summons" the words and figure "such failure as is referred to in rule 2" shall be substituted;

(*iii*) in rule 5, in sub-rule (*1*), for the words "three months", the words "one month" shall be substituted;

(*iv*) in rule 6, in sub-rule (*1*), for clause (*a*), the following clause shall be substituted, namely:—

"(*a*) if it is proved that the summons was duly served, the Court may make an order that the suit be heard *ex parte*;*

* * * * *";

(*v*) to rule 13, after the proviso, the following further proviso shall be added, namely:—

"Provided further that no Court shall set aside a decree passed *ex parte* merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.";

(*vi*) in rule 13, the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—Where there has been an appeal against a decree passed *ex parte* under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that *ex parte* decree.".

Amendment of Order X.

60. In the First Schedule, in Order X, for rule 2, the following rule shall be substituted, namely:—

Oral examination of party, or companion of party.

"2. (*1*) At the first hearing of the suit, the Court—

(*a*) shall, with a view to elucidating matters in controversy in the suit, examine orally such of the parties to the suit appearing in person or present in Court, as it deems fit; and

(*b*) may orally examine any person, able to answer any material question relating to the suit, by whom any party appearing in person or present in Court or his pleader is accompanied.

(*2*) At any subsequent hearing, the Court may orally examine any party appearing in person or present in Court, or any person, able to answer any material question relating to the suit, by whom such party or his pleader is accompanied.

(*3*) The Court may, if it thinks fit, put in the course of an examination under this rule questions suggested by either party.".

Amendment of Order XI.

61. In the First Schedule, in Order XI,—

(*i*) in rule 6, for the words "or on any other ground", the words "or on the ground of privilege or any other ground" shall be substituted;

(*ii*) in rule 15, after the words "in whose pleadings or affidavits reference is made to any document,", the words "or who has entered any document in any list annexed to his pleadings," shall be inserted;

(*iii*) in rule 19, in sub-rule (*2*), the words "unless the document relates to matters of State" shall be inserted at the end;

(*iv*) rule 21 shall be re-numbered as sub-rule (*1*) of that rule, and,—

(*a*) in sub-rule (*1*) as so re-numbered, for the words "an order may be made accordingly", the words "an order may be made on such application accordingly, after notice to the parties and after giving them a reasonable opportunity of being heard" shall be substituted;

(*b*) after sub-rule (*1*) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(*2*) Where an order is made under sub-rule (*1*) dismissing any suit, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action.".

62. In the First Schedule, in Order XII,— Amendment of Order XII.

(*i*) in rule 2, for the words "to admit any document", the words to admit, within fifteen days from the date of service of the notice any document," shall be substituted;

(*ii*) after rule 2, the following rule shall be inserted, namely:—

"2A. (*1*) Every document which a party is called upon to admit, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of that party or in his reply to the notice to admit documents, shall be deemed to be admitted except as against a person under a disability: Document to be deemed to be admitted if not denied after service of notice to admit documents.

Provided that the Court may, in its discretion and for reasons to be recorded, require any document so admitted to be proved otherwise than by such admission.

(*2*) Where a party unreasonably neglects or refuses to admit a document after the service on him of the notice to admit documents, the Court may direct him to pay costs to the other party by way of compensation.";

(*iii*) for rule 6, the following rule shall be substituted, namely:

"6. (*1*) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions. Judgment on admissions.

(*2*) Whenever a judgment is pronounced under sub-rule (*1*), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.".

63. In the First Schedule, in Order XIII,— Amendment of Order XIII.

(*i*) in rule 1,—

(*a*) in the marginal heading, for the words "at first hearing", the words "at or before the settlement of issues" shall be substituted;

(*b*) in sub-rule (*1*), for the words "at the first hearing of the suit", the words "at or before the settlement of issues" shall be substituted;

(*ii*) rule 2 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(*2*) Nothing in sub-rule (*1*) shall apply to documents,—

(*a*) produced for the cross-examination of the witnesses of the other party, or

(*b*) handed over to a witness merely to refresh his memory.";

(*iii*) in rule 9, in sub-rule (*1*), for the first proviso, the following proviso shall be substituted, namely:—

"Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor—

(*a*) delivers to the proper officer for being substituted for the original,—

(*i*) in the case of a party to the suit, a certified copy, and

(*ii*) in the case of any other person, an ordinary copy which has been examined, compared and certified in the manner mentioned in sub-rule (*2*) of rule 17 of Order VII, and

(*b*) undertakes to produce the original, if required to do so:".

Amendment of Order XIV.

64. In the First Schedule, in Order XIV,—

(*i*) in rule 1, in sub-rule (*5*), for the words "after such examination of the parties as may appear necessary", the words and figures "after examination under rule 2 of Order X and after hearing the parties or their pleaders" shall be substituted;

(*ii*) for rule 2, the following rule shall be substituted, namely:—

Court to pronounce judgment on all issues.

"2. (*1*) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (*2*), pronounce judgment on all issues.

(*2*) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to—

(*a*) the jurisdiction of the Court, or

(*b*) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.".

Amendment of Order XV.

65. In the First Schedule, in Order XV, rule 2 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(*2*) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and the decree shall bear the date on which the judgment was pronounced.".

66. In the First Schedule, in Order XVI,— Amendment of Order XVI.

(*i*) for rule 1, the following rule shall be substituted, namely:—

"1. (*1*) On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court. List of witnesses and summons to witnesses.

(*2*) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the withess is proposed to be summoned.

(*3*) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (*1*), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.

(*4*) Subject to the provisions of sub-rule (*2*), summonses referred to in this rule may be obtained by the parties on an application to the Court or to such officer as may be appointed by the Court in this behalf.";

(*ii*) for rule 1A, the following rule shall be substituted, namely:—

"1A. Subject to the provisions of sub-rule (*3*) of rule 1, any party to the suit may, without applying for summons under rule 1, bring any witness to give evidence or to produce documents."; Production of witnesses without summons

(*iii*) in rule 2, after sub-rule (*3*), the following sub-rule shall be inserted, namely:—

"(*4*) Where the summons is served directly by the party on a witness, the expenses referred to in sub-rule (*1*) shall be paid to the witness by the party or his agent."; Expenses to be directly paid to witnesses.

(*iv*) after rule 7, the following rule shall be inserted, namely:—

"7A. (*1*) The Court may, on the application of any party for the issue of a summons for the attendance of any person, permit such party to effect service of such summons on such person and shall, in such a case, deliver the summons to such party for service. Summons given to party for service.

(*2*) The service of such summons shall be effected by or on behalf of such party by delivering or tendering to the witness personally a copy thereof signed by the Judge or such officer of the Court as he may appoint in this behalf and sealed with the seal of the Court.

(3) The provisions of rules 16 and 18 of Order V shall apply to a summons personally served under this rule as if the person effecting service were a serving officer.

(4) If such summons, when tendered, is refused or if the person served refuses to sign an acknowledgment of service or for any reason such summons cannot be served personally, the Court shall, on the application of the party, re-issue such summons to be served by the Court in the same manner as a summons to a defendant.

(5) Where a summons is served by a party under this rule, the party shall not be required to pay the fees otherwise chargeable for the service of summons.";

(*v*) in rule 8, for the words, "under this Order," the words, figure and letter "under this Order, not being a summons delivered to a party for service under rule 7A," shall be substituted;

(*vi*) in rule 10, for sub-rule (*1*), the following sub-rule shall be substituted, namely:—

"(*1*) Where a person, to whom a summons has been issued either to attend to give evidence or to produce a document, fails to attend or to produce the document in compliance with such summons, the Court—

(*a*) shall, if the certificate of the serving officer has not been verified by affidavit, or if service of the summons has been effected by a party or his agent, or

(*b*) may, if the certificate of the serving officer has been so verified,

examine on oath the serving officer or the party or his agent, as the case may be, who has effected service, or cause him to be so examined by any Court, touching the service or non-service of the summons.";

(*vii*) rule 12 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(*2*) Notwithstanding that the Court has not issued a proclamation under sub-rule (*2*) of rule 10, nor issued a warrant nor ordered attachment under sub-rule (*3*) of that rule, the Court may impose fine under sub-rule (*1*) of this rule after giving notice to such person to show cause why the fine should not be imposed.";

(*viii*) in rule 14, for the words "to examine any person other than a party to the suit", the words "to examine any person, including a party to the suit," shall be substituted;

(*ix*) in rule 19, in clause (*b*), for the word "fifty", the words "one hundred", and for the words "two hundred miles", the words "five hundred kilometres" shall be substituted;

(*x*) to rule 19, the following proviso shall be added, namely:—

"Provided that where transport by air is available between the two places mentioned in this rule and the witness is paid the fare by air, he may be ordered to attend in person.".

Insertion of new Order XVIA.

67. In the First Schedule, after Order XVI, the following Order shall be inserted, namely:—

'ORDER XVIA

ATTENDANCE OF WITNESSES CONFINED OR DETAINED IN PRISONS

Definitions.

1. In this Order,—

(*a*) "detained" includes detained under any law providing for preventive detention;

(*b*) "prison" includes—

(*i*) any place which has been declared by the State Government, by general or special order, to be a subsidiary jail; and

(*ii*) any reformatory, borstal institution or other institution of a like nature.

Power to require attendance of prisoners to give evidence.

2. Where it appears to a Court that the evidence of a person confined or detained in a prison within the State is material in a suit, the Court may make an order requiring the officer in charge of the prison to produce that person before the Court to give evidence:

Provided that, if the distance from the prison to the Court-house is more than twenty-five kilometres, no such order shall be made unless the Court is satisfied that the examination of such person on commission will not be adequate.

Expenses to be paid into Court.

3. (*1*) Before making any order under rule 2, the Court shall require the party at whose instance or for whose benefit the order is to be issued, to pay into Court such sum of money as appears to the Court to be sufficient to defray the expenses of the execution of the order, including the travelling and other expenses of the escort provided for the witness.

(*2*) Where the Court is subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to any rules made by the High Court in that behalf.

Power of State Government to exclude certain persons from the operation of rule 2.

4. (*1*) The State Government may, at any time, having regard to the matters specified in sub-rule (*2*), by general or special order, direct that any person or class of persons shall not be removed from the prison in which he or they may be confined or detained, and thereupon, so long as the order remains in force, no order made under rule 2, whether before or after the date of the order made by the State Government, shall have effect in respect of such person or class of persons.

(2) Before making an order under sub-rule (1), the State Government shall have regard to the following matters, namely:—

(a) the nature of the offence for which, or the grounds on which, the person or class of persons have been ordered to be confined or detained in prison;

(b) the likelihood of the disturbance of public order if the person or class of persons is allowed to be removed from the prison; and

(c) the public interest, generally.

Officer in charge of prison to abstain from carrying out order in certain cases.

5. Where the person in respect of whom an order is made under rule 2—

(a) is certified by the medical officer attached to the prison as unfit to be removed from the prison by reason of sickness or infirmity; or

(b) is under committal for trial or under remand pending trial or pending a preliminary investigation; or

(c) is in custody for a period which would expire before the expiration of the time required for complying with the order and for taking him back to the prison in which he is confined or detained; or

(d) is a person to whom an order made by the State Government under rule 4 applies,

the officer in charge of the prison shall abstain from carrying out the Court's order and shall send to the Court a statement of reasons for so abstaining.

Prisoner to be brought to Court in custody.

6. In any other case, the officer in charge of the prison shall, upon delivery of the Court's order, cause the person named therein to be taken to the Court so as to be present at the time mentioned in such order, and shall cause him to be kept in custody in or near the Court until he has been examined or until the Court authorises him to be taken back to the prison in which he is confined or detained.

Power to issue commission for examination of witness in prison.

7. (1) Where it appears to the Court that the evidence of a person confined or detained in a prison, whether within the State or elsewhere in India, is material in a suit but the attendance of such person cannot be secured under the preceding provisions of this Order, the Court may issue a commission for the examination of that person in the prison in which he is confined or detained.

(2) The provisions of Order XXVI shall, so far as may be, apply in relation to the examination on commission of such person in prison as they apply in relation to the examination on commission of any other person.'.

Amendment of Order XVII.

68. In the First Schedule, in Order XVII,—

(*i*) in rule 1, for the proviso to sub-rule (2), the following proviso shall be substituted, namely:—

"Provided that,—

(*a*) when the hearing of the suit has commenced, it shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds that, for the exceptional reasons to be recorded by it, the adjournment of the hearing beyond the following day is necessary,

(*b*) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party,

(*c*) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment,

(*d*) where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another Court, is put forward as a ground for adjournment, the Court shall not grant the adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time,

(*e*) where a witness is present in Court but a party or his pleader is not present or the party or his pleader, though present in Court, is not ready to examine or cross-examine the witness, the Court may, if it thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be, by the party or his pleader not present or not ready as aforesaid.";

(*ii*) in rule 2, the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—Where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned, the Court may, in its discretion, proceed with the case as if such party were present.";

(*iii*) in rule 3, for the words "the Court may, notwithstanding such default, proceed to decide the suit forthwith.", the following shall be substituted, namely:—

"the Court may, notwithstanding such default,—

(*a*) if the parties are present, proceed to decide the suit forthwith; or

(*b*) if the parties are, or any of them is, absent, proceed under rule 2.".

69. In the First Schedule, in Order XVIII,—

(*i*) in rule 2, after sub-rule (3), the following sub-rule shall be inserted, namely:— Amendment of Order XVIII.

"(4) Notwithstanding anything contained in this rule, the Court may, for reasons to be recorded, direct or permit any party to examine any witness at any stage.";

(*ii*) after rule 3, the following rule shall be inserted, namely:—

Party to appear before other witnesses.

"3A. Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage.";

(*iii*) for rule 5, the following rule shall be substituted, namely:—

How evidence shall be taken in appealable cases.

"5. In cases in which an appeal is allowed, the evidence of each witness shall be,—

(*a*) taken down in the language of the Court,—

(*i*) in writing by, or in the presence and under the personal direction and superintendence of, the Judge, or

(*ii*) from the dictation of the Judge directly on a typewriter; or

(*b*) if the Judge, for reasons to be recorded, so directs, recorded mechanically in the language of the Court in the presence of the Judge.";

(*iv*) in rule 8, after the words "in writing by the Judge,", the words "or from his dictation in the open Court, or recorded mechanically in his presence," shall be inserted;

(*v*) for rule 9, the following rule shall be substituted, namely:—

When evidence may be taken in English.

"9. (*1*) Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such of the parties as appear by pleaders, do not object to having such evidence as is given in English, being taken down in English, the Judge may so take it down or cause it to be taken down.

(*2*) Where evidence is not given in English but all the parties who appear in person, and the pleaders of such of the parties as appear by pleaders, do not object to having such evidence being taken down in English, the Judge may take down, or cause to be taken down, such evidence in English.";

(*vi*) for rule 13, the following rule shall be substituted, namely:—

Memorandum of evidence in unappealable cases.

"13. In cases in which an appeal is not allowed, it shall not be necessary to take down or dictate or record the evidence of the witnesses at length; but the Judge, as the examination of each witness proceeds, shall make in writing, or dictate directly on the typewriter, or cause to be mechanically recorded, a memorandum of the substance of what the witness deposes, and such memorandum shall be signed by the Judge or otherwise authenticated, and shall form part of the record.";

(*vii*) rule 14 shall be omitted;

(*viii*) after rule 17, the following rule shall be inserted, namely:—

"17A. Where a party satisfies the Court that, after the exercise of due diligence, any evidence was not within his knowledge or could not be produced by him at the time when that party was leading his evidence, the Court may permit that party to produce that evidence at a later stage on such terms as may appear to it to be just.";

Production of evidence not previously known or which could not be produced despite due diligence.

(*ix*) in rule 18, after the words "any question may arise", the words "and where the Court inspects any property or thing it shall, as soon as may be practicable, make a memorandum of any relevant facts observed at such inspection and such memorandum shall form a part of the record of the suit" shall be inserted.

70. In the First Schedule, in Order XX,—

Amendment of Order XX.

(*i*) rule 1 shall be re-numbered as sub-rule (*1*) of that rule, and,—

(*a*) to sub-rule (*1*) as so re-numbered, the following provisos shall be added, namely:—

"Provided that where the judgment is not pronounced at once, every endeavour shall be made by the Court to pronounce the judgment within fifteen days from the date on which the hearing of the case was concluded but, where it is not practicable so to do, the Court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day beyond thirty days from the date on which the hearing of the case was concluded, and due notice of the day so fixed shall be given to the parties or their pleaders:

Provided further that, where a judgment is not pronounced within thirty days from the date on which the hearing of the case was concluded, the Court shall record the reasons for such delay and shall fix a future day on which the judgment will be pronounced and due notice of the day so fixed shall be given to the parties or their pleaders.";

(*b*) after sub-rule (*1*) as so re-numbered, the following sub-rules shall be inserted, namely:—

"(*2*) Where a written judgment is to be pronounced, it shall be sufficient if the findings of the Court on each issue and the final order passed in the case are read out and it shall not be necessary for the Court to read out the whole judgment, but a copy of the whole judgment shall be made available for the perusal of the parties or the pleaders immediately after the judgment is pronounced.

(*3*) The judgment may be pronounced by dictation in open Court to a shorthand writer if the judge is specially empowered by the High Court in this behalf:

Provided that, where the judgment is pronounced by dictation in open Court, the transcript of the judgment so pronounced shall, after making such correction therein as may be necessary, be signed by the judge, bear the date on which it was pronounced, and form a part of the record.";

(*ii*) in rule 2, for the words "A Judge may", the words "A Judge shall" shall be substituted;

(*iii*) after rule 5, the following rule shall be inserted, namely:—

Court to inform parties as to where an appeal lies in cases where parties are not represented by pleaders

"5A. Except where both the parties are represented by pleaders, the Court shall, when it pronounces its judgment in a case subject to appeal, inform the parties present in Court as to the Court to which an appeal lies and the period of limitation for the filing of such appeal and place on record the information so given to the parties.";

(*iv*) in rule 6, in sub-rule (*1*), for the words "names and descriptions of the parties", the words "names and descriptions of the parties, their registered addresses," shall be substituted;

(*v*) after rule 6, the following rules shall be inserted, namely:—

Last paragraph of judgment to indicate in precise terms the reliefs granted.

"6A. (*1*) The last paragraph of the judgment shall state in precise terms the relief which has been granted by such judgment.

(*2*) Every endeavour shall be made to ensure that the decree is drawn up as expeditiously as possible, and, in any case, within fifteen days from the date on which the judgment is pronounced; but where the decree is not drawn up within the time aforesaid, the Court shall if requested so to do by a party desirous of appealing against the decree, certify that the decree has not been drawn up and indicate in the certificate the reasons for the delay, and thereupon—

(*a*) an appeal may be preferred against the decree without filing a copy of the decree and in such a case the last paragraph of the judgment shall, for the purposes of rule 1 of Order XLI, be treated as the decree; and

(*b*) so long as the decree is not drawn up, the last paragraph of the judgment shall, be deemed to be the decree for the purpose of execution and the party interested shall be entitled to apply for a copy of that paragraph only without being required to apply for a copy of the whole of the judgment; but as soon as a decree is drawn up, the last paragraph of the judgment shall cease to have the effect of a decree for the purpose of execution or for any other purpose:

Provided that, where an application is made for obtaining a copy of only the last paragraph of the judgment, such copy shall indicate the name and address of all the parties to the suit.

Copies of type-written judgements when to be made available.

6B. Where the judgment is type-written, copies of the type-written judgment shall, where it is practicable so to do, be made available to the parties immediately after the pronouncement of the judgment on payment, by the party applying for such copy, of such charges as may be specified in the rules made by the High Court.";

(*vi*) in rule 11, in sub-rule (*1*), for the words "at the time of passing the decree order that", the words "incorporate in the decree, after hearing such of the parties who had appeared personally or by pleader at the last hearing, before judgment, an order that" shall be substituted;

(*vii*) in rule 12, in sub-rule (*1*), for clause (*b*), the following clauses shall be substituted, namely:—

"(*b*) for the rents which have accrued on the property during the period prior to the institution of the suit or directing an inquiry as to such rent;

(*ba*) for the *mesne* profits or directing an inquiry as to such *mesne* profits;";

(*viii*) after rule 12, the following rule shall be inserted, namely:—

Decree for specific performance of contract for the sale or lease of immovable property

"12A. Where a decree for the specific performance of a contract for the sale or lease of immovable property orders that the purchase-money or other sum be paid by the purchaser or lessee, it shall specify the period within which the payment shall be made.";

* * * *

(*ix*) in rule 19, in sub-rules (*1*) and (2), after the word "set-off", wherever it occurs, the words "or counter-claim" shall be inserted.

Insertion of new Order XXA.

71. In the First Schedule, after Order XX, the following Order shall be inserted, namely:—

"ORDER XXA

COSTS

Provisions relating to certain items.

1. Without prejudice to the generality of the provisions of this Code relating to costs, the Court may award costs in respect of,—

(*a*) expenditure incurred for the giving of any notice required to be given by law before the institution of the suit;

(*b*) expenditure incurred on any notice which, though not required to be given by law, has been given by any party to the suit to any other party before the institution of the suit;

(*c*) expenditure incurred on the typing, writing or printing of pleadings filed by any party;

(*d*) charges paid by a party for inspection of the records of the Court for the purposes of the suit;

(*e*) expenditure incurred by a party for producing witnesses, even though not summoned through Court; and

(*f*) in the case of appeals, charges incurred by a party for obtaining any copies of judgments and decrees which are required to be filed along with the memorandum of appeal.

Costs to be awarded in accordance with the rules made by High Court.

2. The award of costs under this rule shall be in accordance with such rules as the High Court may make in that behalf.".

* * * *

Amendment of Order XXI.

72. In the First Schedule, in Order XXI,—

(*i*) for rule 1, the following rule shall be substituted, namely:—

Modes of paying money under decree.

"1. (*1*) All money, payable under a decree shall be paid as follows, namely:—

(*a*) by deposit into the Court whose duty it is to execute the decree, or sent to that Court by postal money order or through a bank; or

(*b*) out of Court, to the decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing; or

(*c*) otherwise, as the Court which made the decree, directs.

(*2*) Where any payment is made under clause (*a*) or clause (*c*) of sub-rule (*1*), the judgment-debtor shall give notice thereof to the decree-holder either through the Court or directly to him by registered post, acknowledgment due.

(*3*) Where money is paid by postal money order or through a bank under clause (*a*) or clause (*b*) of sub-rule (*1*), the money order or payment through bank, as the case may be, shall accurately state the following particulars, namely:—

(*a*) the number of the original suit;

(*b*) the names of the parties or where there are more than two plaintiffs or more than two defendants, as the case may be, the names of the first two plaintiffs and the first two defendants;

(*c*) how the money remitted is to be adjusted, that is to say, whether it is towards the principal, interest or costs;

(*d*) the number of the execution case of the Court, where such case is pending; and

(*e*) the name and address of the payer.

(*4*) On any amount paid under clause (*a*) or clause (*c*) of sub-rule (*1*), interest, if any, shall cease to run from the date of service of the notice referred to in sub-rule (*2*).

(*5*) On any amount paid under clause (*b*) of sub-rule (*1*), interest, if any, shall cease to run from the date of such payment:

Provided that, where the decree-holder refuses to accept the postal money order or payment through a bank, interest shall cease to run from the date on which the money was tendered to him, or where he avoids acceptance of the postal money order or payment through bank, interest shall cease to run from the date on which the money would have been tendered to him in the ordinary course of business of the postal authorities or the bank, as the case may be.";

(*ii*) in rule 2,—

(*a*) in sub-rule (*1*), for the words "or the decree is otherwise adjusted", the words "or a decree of any kind is otherwise adjusted" shall be substituted;

(*b*) in sub-rule (*2*), after the words "the judgment-debtor", the words "or any person who has become surety for the judgment-debtor" shall be inserted;

(c) after sub-rule (*2*), the following sub-rule shall be inserted, namely:—

"(*2A*) No payment or adjustment shall be recorded at the instance of the judgment-debtor unless—

(*a*) the payment is made in the manner, provided in rule 1; or

(*b*) the payment or adjustment is proved by documentary evidence; or

(c) the payment or adjustment is admitted by, or on behalf of, the decree-holder in his reply to the notice given under sub-rule (*2*) of rule 1, or before the Court.";

(*iii*) for rule 5, the following rule shall be substituted, namely:—

"5. Where a decree is to be sent for execution to another Court, the Court which passed such decree shall send the decree directly to such other Court whether or not such other Court is situated in the same State, but the Court to which the decree is sent for execution shall, if it has no jurisdiction to execute the decree, send it to the Court having such jurisdiction."; Mode of transfer.

(*iv*) in rule 11, in sub-rule (*2*), in clause (*j*), for sub-clause (*ii*), the following sub-clause shall be substituted, namely:—

"(*ii*) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property;";

(*v*) after rule 11, the following rule shall be inserted, namely:—

"11A. Where an application is made for the arrest and detention in prison of the judgment-debtor, it shall state, or be accompanied by an affidavit stating, the grounds on which arrest is applied for."; Application for arrest to state grounds.

(*vi*) in rule 16, the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—Nothing in this rule shall affect the provisions of section 146, and a transferee of rights in the property,

which is the subject-matter of the suit, may apply for execution of the decree without a separate assignment of the decree as required by this rule.";

(*vii*) in rule 17,—

(*a*) in sub-rule (*1*), for the words "the Court may reject the application, or may allow", the words "the Court shall allow" shall be substituted;

(*b*) after sub-rule (*1*), the following sub-rule shall be inserted, namely:—

"(*1A*) If the defect is not so remedied, the Court shall reject the application:

Provided that where, in the opinion of the Court, there is some inaccuracy as to the amount referred to in clauses (*g*) and (*h*) of sub-rule (*2*) of rule 11, the Court shall, instead of rejecting the application, decide provisionally (without prejudice to the right of the parties to have the amount finally decided in the course of the proceedings) the amount and make an order for the execution of the decree for the amount so provisionally decided.";

(*viii*) in rule 22, in sub-rule (*1*),—

(*a*) for the words "one year", wherever they occur, the words "two years" shall be substituted;

(*b*) in clause (*b*), the word "or" shall be inserted at the end;

(*c*) after clause (*b*), the following clause shall be inserted, namely:—

"(*c*) against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent.";

(*ix*) after rule 22, the following rule shall be inserted, namely:—

Sale not to be set aside on the death of the judgment-debtor before the sale but after the service of the proclamation of sale.

"22A. Where any property is sold in execution of a decree, the sale shall not be set aside merely by reason of the death of the judgment-debtor between the date of issue of the proclamation of sale and the date of the sale notwithstanding the failure of the decree-holder to substitute the legal representative of such deceased judgment-debtor, but, in case of such failure, the Court may set aside the sale if it is satisfied that the legal representative of the deceased judgment-debtor has been prejudiced by the sale.";

(*x*) in rule 24, for sub-rule (*3*), the following sub-rule shall be substituted, namely:—

"(*3*) In every such process, a day shall be specified on or before which it shall be executed and a day shall also be specified on or before which it shall be returned to the Court, but no process shall be deemed to be void if no day for its return is specified therein.";

(*xi*) in rule 26, in sub-rule (*3*), for the words "the Court may require", the words "the Court shall require" shall be substituted;

(*xii*) in rule 29,—

(*a*) after the words "a decree of such Court", the words "or of a decree which is being executed by such Court" shall be inserted;

(*b*) the following proviso shall be added at the end, namely:—

"Provided that if the decree is one for payment of money, the Court shall, if it grants stay without requiring security, record its reasons for so doing.";

(*xiii*) in rule 31, in sub-rules (*2*) and (*3*), for the words "six months", wherever they occur, the words "three months" shall be substituted;

(*xiv*) in rule 32, in sub-rules (*3*) and (*4*), for the words "one year", wherever they occur, the words "six months" shall be substituted;

(*xv*) in rule 34, for sub-rule (*6*), the following sub-rule shall be substituted, namely:—

"(*6*) (*a*) Where the registration of the document is required under any law for the time being in force, the Court, or such officer of the Court as may be authorised in this behalf by the Court, shall cause the document to be registered in accordance with such law.

(*b*) Where the registration of the document is not so required, but the decree-holder desires it to be registered, the Court may make such order as it thinks fit.

(*c*) Where the Court makes any order for the registration of any document, it may make such order as it thinks fit as to the expenses of registration.";

(*xvi*) rule 41 shall be re-numbered as sub-rule (*1*) of that rule, and—

(*a*) in sub-rule (*1*) as so re-numbered, in clause (*b*), for the words "in the case of a corporation", the words "where the judgment-debtor is a corporation" shall be substituted;

(*b*) after sub-rule (*1*) as so re-numbered, the following sub-rules shall be inserted, namely:—

"(*2*) Where a decree for the payment of money has remained unsatisfied for a period of thirty days, the Court may, on the application of the decree-holder and without prejudice to its power under sub-rule (*1*), by order require the judgment-debtor or where the judgment-debtor is a corporation, any officer thereof, to make an affidavit stating the particulars of the assets of the judgment-debtor.

(*3*) In case of disobedience of any order made under sub-rule (*2*), the Court making the order, or any Court to which the proceeding is transferred, may direct that the person disobeying the order be detained in the civil prison for a term not exceeding three months unless before the expiry of such term the Court directs his release.";

(*xvii*) after rule 43, the following rule shall be inserted, namely:—

Custody of movable property.

'43A. (*1*) Where the property attached consists of live-stock, agricultural implements or other articles which cannot conveniently be removed and the attaching officer does not act under the proviso to rule 43, he may, at the instance of the judgment-debtor or of the decree-holder or of any other person claiming to be interested in such property, leave it in the village or place where it has been attached, in the custody of any respectable person (hereinafter referred to as the "custodian").

(*2*) If the custodian fails, after due notice, to produce such property at the place named by the Court before the officer deputed for the purpose or to restore it to the person in whose favour restoration is ordered by the Court, or if the property, though so produced or restored, is not in the same condition as it was when it was entrusted to him,—

(*a*) the custodian shall be liable to pay compensation to the decree-holder, judgment-debtor or any other person who is found to be entitled to the restoration thereof, for any loss or damage caused by his default; and

(*b*) such liability may be enforced—

(*i*) at the instance of the decree-holder, as if the custodian were a surety under section 145;

(*ii*) at the instance of the judgment-debtor or such other person, on an application in execution; and

(*c*) any order determining such liability shall be appealable as a decree.';

(*xviii*) after rule 46, the following rules shall be inserted, namely:—

Notice to garnishee.

"46A. (*1*) The Court may in the case of a debt (other than a debt secured by a mortgage or a charge) which has been attached under rule 46, upon the application of the attaching creditor, issue notice to the garnishee liable to pay such debt, calling upon him either to pay into Court the debt due from him to the judgment-debtor or so much thereof as may be sufficient to satisfy the decree and costs of execution, or to appear and show cause why he should not do so.

(*2*) An application under sub-rule (*1*) shall be made on affidavit verifying the facts alleged and stating that, in the belief of the deponent, the garnishee is indebted to the judgment-debtor.

(*3*) Where the garnishee pays in the Court the amount due from him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the costs of the execution, the Court may direct that the amount may be paid to the decree-holder towards satisfaction of the decree and costs of the execution.

Order against garnishee.

46B. Where the garnishee does not forthwith pay into Court the amount due from him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the costs of execution, and does not appear and show cause in answer to the notice, the Court may order the garnishee to comply with the terms of such notice, and on such order, execution may issue as though such order were a decree against him.

Trial of disputed questions.

46C. Where the garnishee disputes liability, the Court may order that any issue or question necessary for the determination of liability shall be tried as if it were an issue in a suit, and upon the determination of such issue shall make such order or orders as it deems fit:

Provided that if the debt in respect of which the application under rule 46A is made is in respect of a sum of money beyond the pecuniary jurisdiction of the Court, the Court shall send the execution case to the Court of the District Judge to which the said Court is subordinate, and thereupon the Court of the District Judge or any other competent Court to which it may be transferred by the District Judge shall deal with it in the same manner as if the case had been originally instituted in that Court.

Procedure where debt belongs to third person.

46D. Where it is suggested or appears to be probable that the debt belongs to some third person, or that any third person has a lien or charge on, or other interest in, such debt, the Court may order such third person to appear and state the nature and particulars of his claim, if any, to such debt and prove the same.

Order as regards third person.

46E. After hearing such third person and any person or persons who may subsequently be ordered to appear, or where such third or other person or persons do not appear when so ordered, the Court may make such order as is hereinbefore provided, or such other order or orders upon such terms, if any, with respect to the lien, charge or interest, as the case may be, of such third or other person or persons as it may deem fit and proper.

Payment by garnishee to be valid discharge.

46F. Payment made by the garnishee on notice under rule 46A or under any such order as aforesaid shall be a valid discharge to him as against the judgment-debtor and any other person ordered to appear as aforesaid for the amount paid or levied, although the decree in execution of which the application under rule 46A was made, or the order passed in the proceedings on such application, may be set aside or reversed.

Costs.

46G. The costs of any application made under rule 46A and of any proceeding arising therefrom or incidental thereto shall be in the discretion of the Court.

Appeals.

46H. An order made under rule 46B, rule 46C or rule 46E shall be appealable as a decree.

Application to negotiable instruments.

46-I. The provisions of rules 46A to 46H (both inclusive) shall, so far as may be, apply in relation to negotiable instruments attached under rule 51 as they apply in relation to debts.";

(*xix*) in rule 48,—

(*a*) in sub-rule (*1*), after the words "local authority", the words and figures "or of a servant of a corporation engaged in any trade or industry which is established by a Central, Provincial or State Act, or a Government company as defined in section 617 of the Companies Act, 1956," shall be inserted; 1 of 1956.

(*b*) for sub-rule (*3*), the following sub-rule shall be substituted, namely:—

"(*3*) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (*2*), shall, without further notice or other process, bind the appropriate Government or the railway company or local authority or corporation or Government company, as the case may be, while the judgment-debtor is within the local limits to which this Code for the time being extends and while he is beyond those limits, if he is in receipt of any salary or allowances payable out of the Consolidated Fund of India or the Consolidated Fund of the State or the funds of a railway company or local authority or corporation or Government company in India; and the appropriate Government or the railway company or local authority or corporation or Government company, as the case may be, shall be liable for any sum paid in contravention of this rule.";

(*c*) for the *Explanation*, the following *Explanation* shall be substituted, namely:—

'*Explanation.*—In this rule, "appropriate Government" means,—

(*i*) as respects any person in the service of the Central Government, or any servant of a railway administration or of a cantonment authority or of the port authority of a major port, or any servant of a corporation engaged in any trade or industry which is established by a Central Act, or any servant of a Government company in which any part of the share capital is held by the Central Government or by more than one State Governments or partly by the Central Government and partly by one or more State Governments, the Central Government;

(*ii*) as respects any other servant of the Government, or a servant of any other local or other authority, or any servant of a corporation engaged in any trade or industry which is established by a Provincial or State Act, or a servant of any other Government company, the State Government.';

(*xx*) after rule 48, the following rule shall be inserted, namely:—

Attachment of salary or allowances of private employees.

"48A. (*1*) Where the property to be attached is the salary or allowances of an employee other than an employee to whom rule 48 applies, the Court, where the disbursing officer of the employee is within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provisions of section 60, be withheld from such salary or allowances either in

one payment or by monthly instalments as the Court may direct; and upon notice of the order to such disbursing officer, such disbursing officer shall remit to the Court the amount due under the order, or the monthly instalments, as the case may be.

(2) Where the attachable portion of such salary or allowances is already being withheld or remitted to the Court in pursuance of a previous and unsatisfied order of attachment, the disbursing officer shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.

(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2), shall, without further notice or other process, bind the employer while the judgment-debtor is within the local limits to which this Code for the time being extends and while he is beyond those limits, if he is in receipt of salary or allowances payable out of the funds of an employer in any part of India; and the employer shall be liable for any sum paid in contravention of this rule.";

(*xxi*) in rule 50,—

(*a*) in the proviso to sub-rule (*1*), for the words and figures "section 247 of the Indian Contract Act, 1872", the words and figures "section 30 of the Indian Partnership Act, 1932" shall be substituted;

9 of 1872.
9 of 1932.

(*b*) after sub-rule (*4*), the following sub-rule shall be inserted, namely:—

"(*5*) Nothing in this rule shall apply to a decree passed against a Hindu undivided family by virtue of the provisions of rule 10 of Order XXX.";

(*xxii*) in rule 53,—

(*a*) in sub-rule (*1*), for sub-clause (*ii*) of clause (*b*), the following sub-clause shall be substituted, namely:—

"(*ii*) (*a*) the holder of the decree sought to be executed, or

(*b*) his judgment-debtor with the previous consent in writing of such decree-holder, or with the permission of the attaching Court,

applies to the Court receiving such notice to execute the attached decree.";

(*b*) in sub-rule (*6*), after the words "in contravention of such order", the words "with knowledge thereof or" shall be inserted;

(*xxiii*) in rule 54,—

(*a*) after sub-rule (*1*), the following sub-rule shall be inserted, namely:—

"(*1A*) The order shall also require the judgment-debtor to attend Court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale.";

(*b*) in sub-rule (2), the words "and, where the property is land situate in a village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village," shall be added at the end;

(*xxiv*) for rule 57, the following rule shall be substituted, namely:—

Determination of attachment.

"57. (*1*) Where any property has been attached in execution of a decree and the Court, for any reason, passes an order dismissing the application for the execution of the decree, the Court shall direct whether the attachment shall continue or cease and shall also indicate the period up to which such attachment shall continue or the date on which such attachment shall cease.

(*2*) If the Court omits to give such direction, the attachment shall be deemed to have ceased.";

(*xxv*) for the sub-heading *"Investigation of claims and objections"* and for rules 58 to 63, the following sub-heading and rules shall be substituted, namely:—

"Adjudication of claims and objections

Adjudication of claims to, or objections to attachment of, property.

58. (*1*) Where any claim is preferred to, or any objection is made to, the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained:

Provided that no such claim or objection shall be entertained—

(*a*) where, before the claim is preferred or objection is made, the property attached has already been sold; or

(*b*) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(*2*) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(*3*) Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination,—

(*a*) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or

(*b*) disallow the claim or objection; or

(*c*) continue the attachment subject to any mortgage, charge or other interest in favour of any person; or

(*d*) pass such order as in the circumstances of the case it deems fit.

(*4*) Where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(*5*) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (*1*), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, an order so refusing to entertain the claim or objection shall be conclusive.

Stay of sale.

59. Where before the claim was preferred or the objection was made, the property attached had already been advertised for sale, the Court may—

(*a*) if the property is movable, make an order postponing the sale pending the adjudication of the claim or objection, or

(*b*) if the property is immovable, make an order that, pending the adjudication of the claim or objection, the property shall not be sold, or, that pending such adjudication, the property may be sold but the sale shall not be confirmed,

and any such order may be made subject to such terms and conditions as to security or otherwise as the Court thinks fit.";

(*xxvi*) in rule 66,—

(*a*) in sub-rule (*2*), in clause (*a*), after the words "the property to be sold", the words "or, where a part of the property would be sufficient to satisfy the decree, such part" shall be inserted;

(*b*) to sub-rule (*2*), the following provisos shall be added, namely:—

"Provided that where notice of the date for settling the terms of the proclamation has been given to the judgment-debtor by means of an order under rule 54, it shall not be necessary to give notice under this rule to the judgment-debtor unless the Court otherwise directs:

Provided further that nothing in this rule shall be construed as requiring the Court to enter in the proclamation of sale its own estimate of the value of the property, but the proclamation shall include the estimate, if any, given, by either or both of the parties.";

(*xxvii*) in rule 68,—

(*a*) for the words "thirty days", the words "fifteen days" shall be substituted;

(*b*) for the words "fifteen days", the words "seven days" shall be substituted;

(*xxviii*) in rule 69, in sub-rule (*2*), for the word "seven", the word "thirty" shall be substituted;

(*xxix*) after rule 72, the following rule shall be inserted, namely:—

Mortgagee not to bid at sale without the leave of the Court.

"72A. (*1*) Notwithstanding anything contained in rule 72, a mortgagee of immovable property shall not bid for or purchase property sold in execution of a decree on the mortgage unless the Court grants him leave to bid for or purchase the property.

(*2*) If leave to bid is granted to such mortgagee, then the Court shall fix a reserve price as regards the mortgagee, and unless the Court otherwise directs, the reserve price shall be—

(*a*) not less than the amount then due for principal, interest and costs in respect of the mortgage if the property is sold in one lot; and

(*b*) in the case of any property sold in lots, not less than such sum as shall appear to the Court to be properly attributable to each lot in relation to the amount then due for principal, interest and costs on the mortgage.

(*3*) In other respects, the provisions of sub-rules (*2*) and (*3*) of rule 72 shall apply in relation to purchase by the decree-holder under that rule.";

(*xxx*) in rule 89, in sub-rule (*1*), for the words "any person, either owning such property or holding an interest therein by virtue of a title acquired before such sale", the words "any person claiming an interest in the property sold at the time of the sale or at the time of making the application, or acting for or in the interest of such person," shall be substituted;

(*xxxi*) for rule 90, the following rule shall be substituted, namely:—

Application to set aside sale on ground of irregularity or fraud.

"90. (*1*) Where any immovable property has been sold in execution of a decree, the decree-holder, or the purchaser, or any other person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it.

(*2*) No sale shall be set aside on the ground of irregularity or fraud in publishing or conducting it unless, upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

(*3*) No application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up.

Explanation.—The mere absence of, or defect in, attachment of the property sold shall not, by itself, be a ground for setting aside a sale under this rule.";

(*xxxii*) in rule 92,—

(*a*) to sub-rule (*1*), the following proviso shall be added, namely:—

"Provided that, where any property is sold in execution of a decree pending the final disposal of any claim to, or any objection to the attachment of, such property, the Court shall not confirm such sale until the final disposal of such claim or objection.";

(*b*) in sub-rule (*2*), for the words "the Court shall make an order setting aside the sale", the following shall be substituted, namely:—

"or in cases where the amount deposited under rule 89 is found to be deficient owing to any clerical or arithmetical mistake on the part of the depositor and such deficiency has been made good within such time as may be fixed by the Court, the Court shall make an order setting aside the sale";

(*c*) after sub-rule (*3*), the following sub-rules shall be inserted, namely:—

"(*4*) Where a third party challenges the judgment debtor's title by filing a suit against the auction-purchaser, the decree-holder and the judgment-debtor shall be necessary parties to the suit.

(*5*) If the suit referred to in sub-rule (*4*) is decreed, the Court shall direct the decree-holder to refund the money to the auction-purchaser, and where such an order is passed the execution proceeding in which the sale had been held shall, unless the Court otherwise directs, be revived at the stage at which the sale was ordered.";

(*xxxiii*) in rule 97, for sub-rule (*2*), the following sub-rule shall be substituted, namely:—

"(*2*) Where any application is made under sub-rule (*1*), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.";

(*xxxiv*) for rules 98 to 103, the following rules shall be substituted, namely:—

Orders after adjudication.

'98. (*1*) Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (*2*),—

(*a*) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(*b*) pass such other order as, in the circumstances of the case, it may deem fit.

(*2*) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at

his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

Dispossession by decree-holder or purchaser.

99. (*1*) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(*2*) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

Order to be passed upon application Complaining of dispossession.

100. Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination,—

(*a*) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(*b*) pass such other order as, in the circumstances of the case, it may deem fit.

Question to be determined.

101. All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction, shall be determined by the Court dealing with the applica-

Rules not applicable to transferee *pendente lite*.

102. Nothing in rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Explanation.—In this rule, "transfer" includes a transfer by operation of law.

Orders to be treated as decrees.

103. Where any application has been adjudicated upon under rule 98 or rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree.

(*xxxv*) after rule 103, the following rules shall be inserted, namely:—

Order under rule 101 or rule 103 to be subject to the result of pending suit.

"104. Every order made under rule 101 or rule 103 shall be subject to the result of any suit that may be pending on the date of commencement of the proceeding in which such order is made, if in such suit the party against whom the order under rule 101 or rule 103 is made has sought to establish a right which he claims to the present possession of the property.

Hearing of application.

105. (*1*) The Court, before which an application under any of the foregoing rules of this Order is pending, may fix a day for the hearing of the application.

(*2*) Where on the day fixed or on any other day to which the hearing may be adjourned the applicant does not appear when the case is called on for hearing, the Court may make an order that the application be dismissed.

(*3*) Where the applicant appears and the opposite party to whom the notice has been issued by the Court does not appear, the Court may hear the application *ex parte* and pass such order as it thinks fit.

Explanation.—An application referred to in sub-rule (*1*) includes a claim or objection made under rule 58.

Setting aside orders passed *ex parte*, etc.

106. (*1*) The applicant, against whom an order is made under sub-rule (*2*) of rule 105 or the opposite party against whom an order is passed *ex parte* under sub-rule (*3*) of that rule or under sub-rule (*1*) of rule 23, may apply to the Court to set aside the order, and if he satisfies the Court that there was sufficient cause for his non-appearance when the application was called on for hearing, the Court shall set aside the order on such terms as to costs or otherwise as it thinks fit, and shall appoint a day for the further hearing of the application.

(*2*) No order shall be made on an application under sub-rule (*1*) unless notice of the application has been served on the other party.

(*3*) An application under sub-rule (*1*) shall be made within thirty days from the date of the order, or where, in the case of an *ex parte* order, the notice was not duly served, within thirty days from the date when the applicant had knowledge of the order.".

Amendment of Order XXII.

73. In the First Schedule, in Order XXII,—

(*i*) in rule 4, after sub-rule (*3*), the following sub-rules shall be inserted, namely:—

"(*4*) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

(5) Where—

(*a*) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963, and the suit has, in consequence, abated, and 36 of 1963.

(*b*) the plaintiff applies after the expiry of the period specified therefor in the Limitation Act, 1963, for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act, 36 of 1963.

the Court shall, in considering the application under the said section 5, have due regard to the fact of such ignorance, if proved.";

(*ii*) after rule 4, the following rule shall be inserted, namely:—

Procedure where there is no legal representative.

"4A. (*1*) If, in any suit, it shall appear to the Court that any party who has died during the pendency of the suit has no legal representative, the Court may, on the application of any party to the suit, proceed in the absence of a person representing the estate of the deceased person, or may by order appoint the Administrator-General, or an officer of the Court or such other person as it thinks fit to represent the estate of the deceased person for the purpose of the suit; and any judgment or order subsequently given or made in the suit shall bind the estate of the deceased person to the same extent as he would have been bound if a personal representative of the deceased person had been a party to the suit.

(*2*) Before making an order under this rule, the Court—

(*a*) may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate of the deceased person as it thinks fit; and

(*b*) shall ascertain that the person proposed to be appointed to represent the estate of the deceased person is willing to be so appointed and has no interest adverse to that of the deceased person.";

(*iii*) to rule 5, the following proviso shall be added, namely:—

"Provided that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefor, and the Appellate Court may take the same into consideration in determining the question.";

(*iv*) in rule 9, the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—Nothing in this rule shall be construed as barring, in any later suit, a defence based on the facts which constituted the cause of action in the suit which had abated or had been dismissed under this Order.";

(*v*) after rule 10, the following rule shall be inserted, namely:—

"10A. Whenever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall thereupon give notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist.". Duty of pleader to communicate to Court death of a party.

* * * * *

74. In the First Schedule, in Order XXIII,— Amendment of Order XXIII.

(*i*) for rule 1, the following rule shall be substituted, namely:—

"1. (*1*) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim: Withdrawal of suit or abandonment of part of claim.

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(*2*) An application for leave under the proviso to sub-rule (*1*) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(*3*) Where the Court is satisfied,—

(*a*) that a suit must fail by reason of some formal defect, or

(*b*) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(*4*) Where the plaintiff—

(*a*) abandons any suit or part of claim under sub-rule (*1*), or

(*b*) withdraws from a suit or part of a claim without the permission referred to in sub-rule (*3*),

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(*5*) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (*1*), or to withdraw, under sub-rule (*3*), any suit or part of a claim, without the consent of the other plaintiffs.";

(*ii*) after rule 1, the following rule shall be inserted, namely:—

When transposition of defendants as plaintiffs may be permitted.

"1A. Where a suit is withdrawn or abandoned by a plaintiff under rule 1, and a defendant applies to be transposed as a plaintiff under rule 10 of Order I, the Court shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants.";

(*iii*) in rule 3,—

(*a*) after the words "lawful agreement or compromise", the words "in writing and signed by the parties" shall be inserted;

(*b*) for the words "so far as it relates to the suit", the words "so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit" shall be substituted;

(*iv*) to rule 3, the following proviso shall be added, namely:—

"Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.";

(*v*) in rule 3, the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—An agreement or compromise which is void or voidable under the Indian Contract Act, 1872, shall not be deemed to be lawful within the meaning of this rule."; 9 of 1872.

(*vi*) after rule 3, the following rules shall be inserted, namely:—

Bar to suit.

'3A. No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.

No agreement or compromise to be entered in a representative suit without leave of Court.

3B. (*1*) No agreement or compromise in a representative suit shall be entered into without the leave of the Court expressly recorded in the proceedings; and any such agreement or compromise entered into without the leave of the Court so recorded shall be void.

(2) Before granting such leave, the Court shall give notice in such manner as it may think fit to such persons as may appear to it to be interested in the suit.

Explanation.—In this rule, "representative suit" means,—

(*a*) a suit under section 91 or section 92,

(*b*) a suit under rule 8 of Order I,

(*c*) a suit in which the manager of an undivided Hindu family sues or is sued as representing the other members of the family,

(*d*) any other suit in which the decree passed may, by virtue of the provisions of this Code or of any other law for the time being in force, bind any person who is not named as party to the suit.'.

75. In the First Schedule, in Order XXVI,— Amendment of Order XXVI.

(*i*) to rule 1, the following proviso and *Explanation* shall be added, namely:—

"Provided that a commission for examination on interrogatories shall not be issued unless the Court, for reasons to be recorded, thinks it necessary so to do.

Explanation.—The Court may, for the purpose of this rule, accept a certificate purporting to be signed by a registered medical practitioner as evidence of the sickness or infirmity of any person, without calling the medical practitioner as a witness.";

(*ii*) in rule 4,—

(*a*) in sub-rule (*1*), for the words "for the examination of", the words "for the examination on interrogatories or otherwise of—" shall be substituted;

(*b*) to sub-rule (*1*), the following provisos shall be added, namely:—

"Provided that where, under rule 19 of Order XVI, a person cannot be ordered to attend a Court in person, a commission shall be issued for his examination if his evidence is considered necessary in the interests of justice:

Provided further that a commission for examination of such person on interrogatories shall not be issued unless the Court, for reasons to be recorded, thinks it necessary so to do.";

(*iii*) in rule 7, for the brackets and words "(subject to the provisions of the next following rule)", the brackets, words and figure "(subject to the provisions of rule 8)" shall be substituted;

(*iv*) after rule 10, the following heading and rules shall be inserted, namely:—

"Commissions for scientific investigation, performance of ministerial act and sale of movable property

10A. (*1*) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court. Commission for scientific investigation.

(2) The provisions of rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.

Commission for performance of a ministerial act.

10B. (1) Where any question arising in a suit involves the performance of any ministerial act which cannot, in the opinion of the Court, be conveniently performed before the Court, the Court may, if, for reasons to be recorded, it is of opinion that it is necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to perform that ministerial act and report thereon to the Court.

(2) The provisions of rule 10 of this Order shall apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.

Commission for the sale of movable property.

10C. (1) Where, in any suit, it becomes necessary to sell any movable property which is in the custody of the Court pending the determination of the suit and which cannot be conveniently preserved, the Court may, if, for reasons to be recorded, it is of opinion that it is necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to conduct such sale and report thereon to the Court.

(2) The provisions of rule 10 of this Order shall apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.

(3) Every such sale shall be held, as far as may be, in accordance with the procedure prescribed for the sale of movable property in execution of a decree.";

(v) after rule 16, the following rule shall be inserted, namely:—

Questions objected to before the Commissioner.

"16A. (1) Where any question put to a witness is objected to by a party or his pleader in proceedings before a Commissioner appointed under this Order, the Commissioner shall take down the question, the answer, the objections and the name of the party or, as the case may be, the pleader so objecting:

Provided that the Commissioner shall not take down the answer to a question which is objected to on the ground of privilege but may continue with the examination of the witness, leaving the party to get the question of privilege decided by the Court; and, where the Court decides that there is no question of privilege, the witness may be recalled by the Commissioner and examined by him or the witness may be examined by the Court with regard to the question which was objected to on the ground of privilege.

(2) No answer taken down under sub-rule (1) shall be read as evidence in the suit except by the order of the Court.";

(vi) to sub-rule (1) of rule 17, the following proviso shall be added, namely:—

"Provided that when the Commissioner is not a Judge of a Civil Court, he shall not be competent to impose penalties; but

such penalties may be imposed on the application of such Commissioner by the Court by which the commission was issued.";

(*vii*) after rule 18, the following rules shall be inserted, namely:—

"18A. The provisions of this Order shall apply, so far as may be, to proceedings in execution of a decree or order. Application of Order to execution proceedings.

18B. The Court issuing a commission shall fix a date on or before which the commission shall be returned to it after execution, and the date so fixed shall not be extended except where the Court, for reasons to be recorded, is satisfied that there is sufficient cause for extending the date."; Court to fix a time for return of commission.

(*viii*) in rule 22, for the figures and word "16, 17 and 18", the words, brackets, figures and letters "sub-rule (*1*) of rule 16A, 17, 18 and 18B" shall be substituted.

76. In the First Schedule, in Order XXVII,— Amendment of Order XXVII.

(*i*) in rule 5, the words "but the time * * * so extended shall not exceed two months in the aggregate" shall be inserted at the end:

(*ii*) after rule 5, the following rules hall be inserted, namely:—

"5A. Where a suit is instituted against a public officer for damages or other relief in respect of any act alleged to have been done by him in his official capacity, the Government shall be joined as a party to the suit. Government to be joined as a party in a suit against a public officer.

5B. (*1*) In every suit or proceeding to which the Government, or a public officer acting in his official capacity, is a party, it shall be the duty of the Court to make, in the first instance, every endeavour, where it is possible to do so consistently with the nature and circumstances of the case, to assist the parties in arriving at a settlement in respect of the subject-matter of the suit. Duty of Court in suits against the Government or a public officer to assist in arriving at a settlement.

(2) If, in any such suit or proceeding, at any stage, it appears to the Court that there is a reasonable possibility of a settlement between the parties, the Court may adjourn the proceeding for such period as it thinks fit, to enable attempts to be made to effect such a settlement.

(3) The power conferred under sub-rule (*2*) is in addition to any other power of the Court to adjourn proceedings.".

Amendment of Order XXVIIA.

77. In the First Schedule, in Order XXVIIA,—

(*i*) in the heading, after the words "INTERPRETATION OF THE CONSTITUTION", the words "OR AS TO THE VALIDITY OF ANY STATUTORY INSTRUMENT" shall be inserted;

(*ii*) after rule 1, the following rule shall be inserted, namely:—

Procedure in suits involving validity of any statutory instrument.

"1A. In any suit in which it appears to the Court that any question as to the validity of any statutory instrument, not being a question of the nature mentioned in rule 1, is involved, the Court shall not proceed to determine that question except after giving notice—

(*a*) to the Government Pleader, if the question concerns the Government, or

(*b*) to the authority which issued the statutory instrument, if the question concerns an authority other than Government.";

(*iii*) after rule 2, the following rule shall be inserted, namely:—

Power of Court to add Government or other authority as a defendant in a suit relating to the validity of any statutory instrument.

"2A. The Court may, at any stage of the proceedings in any suit involving any such question as is referred to in rule 1A, order that the Government or other authority shall be added as a defendant if the Government Pleader or the pleader appearing in the case for the authority which issued the instrument, as the case may be, whether upon receipt of notice under rule 1A or otherwise, applies for such addition, and the Court is satisfied that such addition is necessary or desirable for the satisfactory determination of the question.";

(*iv*) for rule 3, the following rule shall be substituted, namely:—

Costs.

"3. Where, under rule 2 or rule 2A, the Government or any other authority is added as a defendant in a suit, the Attorney-General, Advocate-General, or Government Pleader or Government or other authority shall not be entitled to, or liable for, costs in the Court which ordered the addition unless the Court, having regard to all the circumstances of the case for any special reason, otherwise orders.";

(*v*) after rule 4, the following *Explanation* shall be inserted, namely:—

'*Explanation.*—In this Order, "statutory instrument" means a rule, notification, bye-law, order, scheme or form made as specified under any enactment.'.

78. In the First Schedule, in Order XXX,—

Amendment of Order XXX.

(*i*) in rule 2, for the proviso below sub-rule (*3*), the following proviso shall be substituted, namely:—

"Provided that all proceedings shall nevertheless continue in the name of the firm, but the name of the partners disclosed in the manner specified in sub-rule (*1*) shall be entered in the decree.";

(*ii*) for rule 8, the following rule shall be substituted, namely:—

Appearance under protest.

"8. (*1*) Any person served with summons as a partner under rule 3 may enter an appearance under protest, denying that he was a partner at any material time.

(*2*) On such appearance being made, either the plaintiff or the person entering the appearance may, at any time before the date fixed for hearing and final disposal of the suit, apply to the Court for determining whether that person was a partner of the firm and liable as such.

(*3*) If, on such application, the Court holds that he was a partner at the material time, that shall not preclude the person from filing a defence denying the liability of the firm in respect of the claim against the defendant.

(*4*) If the Court, however, holds that such person was not a partner of the firm and was not liable as such, that shall not preclude the plaintiff from otherwise serving a summons on the firm and proceeding with the suit; but in that event, the plaintiff shall be precluded from alleging the liability of that person as a partner of the firm in execution of any decree that may be passed against the firm.";

(*iii*) for rule 10, the following rule shall be substituted, namely:—

Suit against person carrying on business in name other than his own.

"10. Any person carrying on business in a name or style other than his own name, or a Hindu undivided family carrying on business under any name, may be sued in such name or style as if it were a firm name, and, in so far as the nature of such case permits, all rules under this Order shall apply accordingly.".

79. In the First Schedule, in Order XXXII,—

Amendment of Order XXXII.

(*i*) in rule 1, the following *Explanation* shall be inserted at the end, namely:—

'*Explanation.*—In this Order, "minor" means a person who has not attained his majority within the meaning of section 3 of the Indian Majority Act, 1875, where the suit relates to any of the matters mentioned in clauses (*a*) and (*b*) of section 2 of that Act or to any other matter.';

9 of 1875.

(*ii*) after rule 2, the following rule shall be inserted, namely:—

Security to be furnished by next friend when so ordered.

"2A. (*1*) Where a suit has been instituted on behalf of the minor by his next friend, the Court may, at any stage of the suit, either of its own motion or on the application of any defendant, and for reasons to be recorded, order the next friend to give security for the payment of all costs incurred or likely to be incurred by the defendant.

(*2*) Where such a suit is instituted by an indigent person, the security shall include the court-fees payable to the Government.

(*3*) The provisions of rule 2 of Order XXV shall, so far as may be, apply to a suit where the Court makes an order under this rule directing security to be furnished.";

(*iii*) in rule 3,—

(*a*) in sub-rule (*4*),—

(*i*) the words "to the minor and" shall be omitted;

(*ii*) for the words "upon notice to the father or other natural guardian", the words "upon notice to the father or where there is no father, to the mother, or where there is no father or mother, to other natural guardian" shall be substituted;

(*iii*) for the words "no father or other natural guardian", the words "no father, mother or other natural guardian" shall be substituted;

(*b*) after sub-rule (*4*), the following sub-rule shall be inserted, namely:—

"(*4A*) The Court may, in any case, if it thinks fit, issue notice under sub-rule (*4*) to the minor also.";

(*iv*) after rule 3, the following rule shall be inserted, namely:—

Decree against minor not to be set aside unless prejudice has been caused to his interests.

"3A. (*1*) No decree passed against a minor shall be set aside merely on the ground that the next friend or guardian for the suit of the minor had an interest in the subject-matter of the suit adverse to that of the minor, but the fact that by reason of such adverse interest of the next friend or guardian for the suit, prejudice has been caused to the interests of the minor, shall be a ground for setting aside the decree.

(*2*) Nothing in this rule shall preclude the minor from obtaining any relief available under any law by reason of the misconduct or gross negligence on the part of the next friend or guardian for the suit resulting in prejudice to the interests of the minor.";

(*v*) in rule 4,—

(*a*) in sub-rule (*3*), after the word "consent", the words "in writing" shall be inserted;

(*b*) in sub-rule (*4*), after the words "any fund in Court in which the minor is interested", the words "or out of the property of the minor" shall be inserted;

(*vi*) in rule 6, to sub-rule (*2*), the following proviso shall be added, namely:—

"Provided that the Court may, for reasons to be recorded, dispense with such security while granting leave to the next friend or guardian for the suit to receive money or other movable property under a decree or order, where such next friend or guardian—

(*a*) is the manager of a Hindu undivided family and the decree or order relates to the property or business of the family; or

(*b*) is the parent of the minor.";

(*vii*) in rule 7, after sub-rule (*1*), the following sub-rule shall be inserted, namely:—

"(*1A*) An application for leave under sub-rule (*1*) shall be accompanied by an affidavit of the next friend or the guardian for the suit, as the case may be, and also, if the minor is represented by a pleader, by the certificate of the pleader, to the effect that the agreement or compromise proposed is, in his opinion, for the benefit of the minor:

Provided that the opinion so expressed, whether in the affidavit or in the certificate shall not preclude the Court from examining whether the agreement or compromise proposed is for the benefit of the minor.";

(*viii*) for rule 15, the following rule shall be substituted, namely:—

"15. Rules 1 to 14 (except rule 2A) shall, so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing or being sued."; Rules 1 to 14 (except rule 2A) to apply to persons of unsound mind.

(*ix*) for rule 16, the following rule shall be substituted, namely:—

"16. (*1*) Nothing contained in this Order shall apply to the Ruler of a foreign State suing or being sued in the name of his State, or being sued by the direction of the Central Government in the name of an agent or in any other name. Savings.

(*2*) Nothing contained in this Order shall be construed as affecting or in any way derogating from the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind.".

Insertion of new Order. XXXIIA.

80. In the First Schedule, after Order XXXII, the following Order shall be inserted, namely:—

'ORDER XXXIIA

SUITS RELATING TO MATTERS CONCERNING THE FAMILY

Application of the Order

1. (*1*) The provisions of this Order shall apply to suits or proceedings relating to matters concerning the family.

(*2*) In particular, and without prejudice to the generality of the provisions of sub-rule (*1*), the provisions of this Order shall apply to the following suits or proceedings concerning the family, namely:—

(*a*) a suit or proceeding for matrimonial relief, including a suit or proceeding for declaration as to the validity of a marriage or as to the matrimonial status of any person;

(*b*) a suit or proceeding for a declaration as to the legitimacy of any person;

(*c*) a suit or proceeding in relation to the guardianship of the person or the custody of any minor or other member of the family, under a disability;

(*d*) a suit or proceeding for maintenance;

(*e*) a suit or proceeding as to the validity or effect of an adoption;

(*f*) a suit or proceeding, instituted by a member of the family, relating to wills, intestacy and succession;

(*g*) a suit or proceeding relating to any other matter concerning the family in respect of which the parties are subject to their personal law.

(*3*) So much of this Order as relates to a matter provided for by a special law in respect of any suit or proceeding shall not apply to that suit or proceeding.

Proceedings to be held *in camera*.

2. In every suit or proceeding to which this Order applies, the proceedings may be held *in camera* if the Court so desires and shall be so held if either party so desires.

Duty of Court to make efforts for settlement.

3. (*1*) In every suit or proceeding to which this Order applies, an endeavour shall be made by the Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist the parties in arriving at a settlement in respect of the subject-matter of the suit.

(*2*) If, in any such suit or proceeding, at any stage it appears to the Court that there is a reasonable possibility of a settlement between the parties, the Court may adjourn the proceeding for such period as it thinks fit to enable attempts to be made to effect such a settlement.

(*3*) The power conferred by sub-rule (*2*) shall be in addition to, and not in derogation of, any other power of the Court to adjourn the proceedings.

Assistance of welfare expert.

4. In every suit or proceeding to which this Order applies, it shall be open to the Court to secure the services of such person (preferably a woman where available), whether related to the parties or not, including a person professionally engaged in promoting the welfare of the family as the Court may think fit, for the purpose of assisting the Court in discharging the functions imposed by rule 3 of this Order.

Duty to inquire into facts.

5. In every suit or proceeding to which this Order applies, it shall be the duty of the Court to inquire, so far it reasonably can, into the facts alleged by the plaintiff and into any facts alleged by the defendant.

"Family" —meaning of.

6. For the purposes of this Order, each of the following shall be treated as constituting a family, namely:—

(*a*) (*i*) a man and his wife living together,

(*ii*) any child or children, being issue of theirs; or of such man or such wife,

(*iii*) any child or children being maintained by such man and wife;

(*b*) a man not having a wife or not living together with his wife, any child or children, being issue of his, and any child or children being maintained by him;

(*c*) a woman not having a husband or not living together with her husband, any child or children being issue of hers, and any child or children being maintained by her;

(*d*) a man or woman and his or her brother, sister, ancestor or lineal descendant living with him or her; and

(*e*) any combination of one or more of the groups specified in clause (*a*), clause (*b*), clause (c) or clause (*d*) of this rule.

Explanation.—For the avoidance of doubts, it is hereby declared that the provisions of rule 6 shall be without any prejudice to the concept of "family" in any personal law or in any other law for the time being in force.'.

Amendment of Order XXXIII.

81. In the First Schedule, in Order XXXIII,—

(*i*) for the heading, the following shall be substituted, namely:—

"SUITS BY INDIGENT PERSONS";

(*ii*) in the Order, for the word "pauper", wherever it occurs, the words "indigent person", shall, with such grammatical variations or cognate expressions as may be necessary, be substituted;

(*iii*) in rule 1, for the *Explanation*, the following *Explanations* shall be substituted, namely:—

"*Explanation I.*—A person is an indigent person,—

(*a*) if he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject-matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit, or

(*b*) where no such fee is prescribed, if he is not entitled to property worth one thousand rupees other than the property exempt from attachment in execution of a decree, and the subject-matter of the suit.

Explanation II.—Any property which is acquired by a person after the presentation of his application for permission to sue as an indigent person, and before the decision of the application, shall be taken into account in considering the question whether or not the applicant is an indigent person.

Explanation III.—Where the plaintiff sues in a representative capacity, the question whether he is an indigent person shall be determined with reference to the means possessed by him in such capacity.";

(*iv*) after rule 1, the following rule shall be inserted, namely:—

Inquiry into the means of an indigent person.

"1A. Every inquiry into the question whether or not a person is an indigent person shall be made, in the first instance, by the chief ministerial officer of the Court, unless the Court otherwise directs, and the Court may adopt the report of such officer as its own finding or may itself make an inquiry into the question.";

(*v*) to rule 3, the following proviso shall be added, namely:—

"Provided that, where there are more plaintiffs than one, it shall be sufficient if the application is presented by one of the plaintiffs.";

(*vi*) in rule 5,—

(*a*) to clause (*c*), the following proviso shall be added, namely:—

"Provided that no application shall be rejected if, even after the value of the property disposed of by the applicant is taken into account, the applicant would be entitled to sue as an indigent person.";

(*b*) in clause (*c*), the word "or" shall be inserted at the end;

(*c*) after clause (*e*), the following clauses shall be inserted, namely:—

"(*f*) where the allegations made by the applicant in the application show that the suit would be barred by any law for the time being in force, or

(*g*) where any other person has entered into an agreement with him to finance the litigation.";

(*vii*) in rule 7,—

(*a*) in sub-rule (*1*), for the words "a memorandum of the substance of their evidence", the words "a full record of their evidence" shall be substituted;

(*b*) after sub-rule (*1*), the following sub-rule shall be inserted, namely:—

"(*1A*) The examination of the witnesses under sub-rule (*1*) shall be confined to the matters specified in clause (*b*),

clause (c) and clause (e) of rule 5 but the examination of the applicant or his agent may relate to any of the matters specified in rule 5.".

(c) in sub-rule (2), for the words "as herein provided", the words and figure "under rule 6 or under this rule" shall be substituted;

(*viii*) in rule 8, for the brackets and words "(other than fees payable for service of process)", the words "or fees payable for service of process" shall be substituted;

(*ix*) after rule 9, the following rule shall be inserted, namely:—

Court to assign a pleader to an unrepresented indigent person.

"9A. (*1*) Where a person, who is permitted to sue as an indigent person, is not represented by a pleader, the Court may, if the circumstances of the case so require, assign a pleader to him.

(*2*) The High Court may, with the previous approval of the State Government, make rules providing for—

(*a*) the mode of selecting pleaders to be assigned under sub-rule (*1*);

(*b*) the facilities to be provided to such pleaders by the Court;

(*c*) any other matter which is required to be or may be provided by the rules for giving effect to the provisions of sub-rule (*1*).";

(*x*) in rule 11, in clause (*a*), after the words "such service", the words "or to present copies of the plaint or concise statement" shall be inserted;

(*xi*) in rule 15, for the words "provided that he first pays", the words "provided that the plaint shall be rejected if he does not pay, either at the time of the institution of the suit or within such time thereafter as the Court may allow,";

(*xii*) after rule 15, the following rule shall be inserted, namely:—

Grant of time for payment of Court-fee.

"15A. Nothing contained in rule 5, rule 7 or rule 15 shall prevent a Court, while rejecting an application under rule 5 or refusing an application under rule 7, from granting time to the applicant to pay the requisite court-fee within such time as may be fixed by the Court or extended by it from time to time; and upon such payment and on payment of the costs referred to in sub-rule (*2*) of rule 15 within that time, the suit shall be deemed to have been instituted on the date on which the application for permission to sue as an indigent person was presented.";

(*xiii*) after rule 16, the following rule shall be inserted, namely:—

Defence by an indigent person.

"17. Any defendant, who desires to plead a set-off or counter-claim, may be allowed to set up such claim as an indigent person, and the rules contained in this Order shall so far as may be, apply to him as if he were a plaintiff and his written statement were a plaint.".

Amendment of Order XXXIV.

82. In the First Schedule, in Order XXXIV,—

* * * *

(*i*) in rule 6, for the words "the last preceding rule", the word and figure "rule 5" shall be substituted;

* * * *

(*ii*) in rule 8A,—

(*a*) for the words "the last preceding rule", the word and figure "rule 8" shall be substituted;

(*b*) for the words "on application by him", the words "on application by him in execution" shall be substituted;

* * * *

(*iii*) to rule 10, the following proviso shall be added, namely:—

"Provided that where the mortgagor, before or at the time of the institution of the suit, tenders or deposits the amount due on the mortgage, or such amount as is not substantially deficient in the opinion of the Court, he shall not be ordered to pay the costs of the suit to the mortgagee and the mortgagor shall be entitled to recover his own costs of the suit from the mortgagee, unless the Court, for reasons to be recorded, otherwise directs.";

(*iv*) after rule 10, the following rule shall be inserted, namely:—

Power of Court to direct mortgagee to pay mesne profits.

"10A. Where in a suit for foreclosure, the mortgagor has, before or at the time of the institution of the suit, tendered or deposited the sum due on the mortgage, or such sum as is not substantially deficient in the opinion of the Court, the Court shall direct the mortgagee to pay to the mortgagor mesne profits for the period beginning with the institution of the suit.";

(*v*) rule 15 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(*2*) Where a decree orders payment of money and charges it on immovable property on default of payment, the amount may be realised by sale of that property in execution of that decree.".

Amendment of Order XXXVI.

83. In the First Schedule, in Order XXXVI,—

(*i*) in rule 3,—

(*a*) in sub-rule (*1*), after the words "may be filed", the words "with an application" shall be inserted;

(*b*) in sub-rule (*2*),—

(*i*) for the words "The agreement", the words "The application" shall be substituted;

(*ii*) for the words "it was presented", the words "the application was presented" shall be substituted;

(*ii*) after rule 5, the following rule shall be inserted, namely:—

"6. No appeal shall lie from a decree passed under rule 5.". **No appeal from a decree passed under rule 5.**

84. In the First Schedule, in Order XXXVII,— **Amendment of Order XXXVII.**

(*i*) in the heading, the words "ON NEGOTIABLE INSTRUMENTS" shall be omitted;

(*ii*) for rule 1, the following rule shall be substituted, namely:—

"1. (*1*) This Order shall apply to the following Courts, namely:— **Courts and classes of suits to which the Order is to apply.**

(*a*) High Courts, City Civil Courts and Courts of Small Causes; and

(*b*) other Courts:

Provided that in respect of the * Courts referred to in clause (*b*), the High Court may, by notification in the Official Gazette, restrict the operation of this Order only to such categories of suits as it deems proper, and may also, from time to time, as the circumstances of the case may require, by subsequent notification in the Official Gazette, further restrict, enlarge or vary, the categories of suits to be brought under the operation of this Order as it deems proper.

(*2*) Subject to the provisions of sub-rule (*1*), the Order applies to the following classes of suits, namely:—

(*a*) suits upon bills of exchange, hundies and promissory notes;

(*b*) suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising,—

(*i*) on a written contract; or

(*ii*) on an enactment, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or

(*iii*) on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only.";

(*iii*) for rule 2, the following rule shall be substituted, namely:—

"2. (*1*) A suit, to which this Order applies, may if the plaintiff desires to proceed hereunder, be instituted by presenting a plaint which shall contain,— **Institution of summary suits.**

(*a*) a specific averment to the effect that the suit is filed under this Order;

(*b*) that no relief, which does not fall within the ambit of this rule, has been claimed in the plaint; and

(*c*) the following inscription, immediately below the number of the suit in the title of the suit, namely:—

"(Under Order XXXVII of the Code of Civil Procedure, 1908).";

(*2*) The summons of the suit shall be in Form No. 4 in Appendix B or in such other Form as may, from time to time, be prescribed.

(*3*) The defendant shall not defend the suit referred to in sub-rule (*1*) unless he enters an appearance*** and in default of his entering an appearance*** the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith.';

(*iv*) for rule 3, the following rule shall be substituted, namely:—

Procedure for the appearance of defendant.

"3. (*1*) In a suit to which this Order applies, the plaintiff shall, together with the summons under rule 2, serve on the defendant a copy of the plaint and annexures thereto and the defendant may, at any time within ten days of such service, enter an appearance either in person or by pleader and, in either case, he shall file in Court an address for service of notices on him.

(*2*) Unless otherwise ordered, all summonses, notices and other judicial processes, required to be served on the defendant, shall be deemed to have been duly served on him if they are left at the address given by him for such service.

(*3*) On the day of entering the appearance, notice of such appearance shall be given by the defendant to the plaintiff's pleader, or, if the plaintiff sues in person, to the plaintiff himself, either by notice delivered at or sent by a pre-paid letter directed to the address of the plaintiff's pleader or of the plaintiff, as the case may be.

(*4*) If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form No. 4A in Appendix B or such other Form as may be prescribed from time to time, returnable not less than ten days from the date of service supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit.

(*5*) The defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit. and [illegible] to defend may be granted to him

unconditionally or upon such terms as may appear to the Court or Judge to be just:

Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious:

Povided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court.

(6) At the hearing of such summons for judgment,—

(a) if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith; or

(b) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith.

(7) The Court or Judge may, for sufficient cause shown by the defendant, excuse the delay of the defendant in entering an appearance or in applying for leave to defend the suit.".

Amendment of Order XXXVIII.

85. In the First Schedule, in Order XXXVIII,—

* * * *

(*i*) in rule 5, after sub-rule (*3*), the following sub-rule shall be inserted, namely:—

"(*4*) If an order of attachment is made without complying with the provisions of sub-rule (*1*) of this rule, such attachment shall be void.";

(*ii*) for rule 8, the following rule shall be substituted, namely:—

Adjudication of claim to property attached before judgment.

"8. Where any claim is preferred to property attached before judgment, such claim shall be adjudicated upon in the manner hereinbefore provided for the adjudication of claims to property attached in execution of a decree for the payment of money.";

(*iii*) after rule 11, the following rule shall be inserted, namely:—

Provisions applicable to attachment.

"11A. (*1*) The provisions of this Code applicable to an attachment made in execution of a decree shall, so far as may be, apply to an attachment made before judgment which continues after the judgment by virtue of the provisions of rule 11.

(*2*) An attachment made before judgment in a suit which is dismissed for default shall not become revived merely by rea-

son of the fact that the order for the dismissal of the suit for default has been set aside and the suit has been restored.".

Amendment of Order XXXIX.

86. In the First Schedule, in Order XXXIX,—

(*i*) in rule 1,—

(*a*) in clause (*b*), for the word "defraud", the word "defrauding" shall be substituted;

(*b*) after clause (*b*), the following clause shall be inserted, namely:—

"(*c*) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,";

(*c*) after the words "sale, removal or disposition of the property", the words "or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit" shall be inserted;

(*ii*) in rule 2, sub-rules (*3*) and (*4*) shall be omitted;

(*iii*) after rule 2, the following rule shall be inserted, namely:—

Consequence of disobedience or breach of injunction.

"2A. (*1*) In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(*2*) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.";

(*iv*) to rule 3, the following proviso shall be added, namely:—

"Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant—

(*a*) to deliver to the opposite party, or to send to him by registered post, immediately after the order granting the injunction has been made, a copy of the application for injunction together with—

(*i*) a copy of the affidavit filed in support of the application;

(*ii*) a copy of the plaint; and

(*iii*) copies of documents on which the applicant relies, and

(*b*) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent.";

(*v*) after rule 3, the following rule shall be inserted, namely:—

"3A. Where an injunction has been granted without giving notice to the opposite party, the Court shall make an endeavour to finally dispose of the application within thirty days from the date on which the injunction was granted; and where it is unable so to do, it shall record its reasons for such inability.";

Court to dispose of application for injunction within thirty days.

(*vi*) to rule 4, the following proviso shall be added, namely:—

"Provided that if in an application for temporary injunction or in any affidavit supporting such application, a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the Court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interests of justice:

Provided further that where an order for injunction has been passed after giving to a party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the Court is satisfied that the order has caused undue hardship to that party.";

(*vii*) in rule 8,—

(*a*) in sub-rule (*1*), the words "after notice to the defendant" shall be omitted;

(*b*) in sub-rule (*2*), the words "after notice to the plaintiff" shall be omitted;

(*c*) after sub-rule (*2*), the following sub-rule shall be inserted, namely:—

"(*3*) Before making an order under rule 6 or rule 7 on an application made for the purpose, the Court shall, except where it appears that the object of making such order would be defeated by the delay, direct notice thereof to be given to the opposite party.".

87. In the First Schedule, in Order XLI,— Amendment of Order XLI.

(*i*) rule 1,—

(*a*) to sub-rule (*1*), the following proviso shall be added, namely:—

"Provided that where two or more suits have been tried together and a common judgment has been delivered therefor and two or more appeals are filed against any

decree covered by that judgment, whether by the same appellant or by different appellants, the Appellate Court may dispense with the filing of more than one copy of the judgment.";

(*b*) after sub-rule (*2*), the following sub-rules shall be inserted, namely:—

"(*3*) Where the appeal is against a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit.".

(*ii*) after rule 3, the following rule shall be inserted, namely:—

Application for condonation of delay.

"3A. (*1*) When an appeal is presented after the expiry of the period of limitation specified therefor, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period.

(*2*) If the Court sees no reason to reject the application without the issue of a notice to the respondent, notice thereof shall be issued to the respondent and the matter shall be finally decided by the Court before it proceeds to deal with the appeal under rule 11 or rule 13, as the case may be.

(*3*) Where an application has been made under sub-rule (*1*), the Court shall not make an order for the stay of execution of the decree against which the appeal is proposed to be filed so long as the Court does not, after hearing under rule 11, decide to hear the appeal.";

(*iii*) in rule 5,—

(*a*) in sub-rule (*1*), the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—An order by the Appellate Court for the stay of execution of the decree shall be effective from the date of the communication of such order to the Court of first instance, but an affidavit sworn by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court shall, pending the receipt from the Appellate Court of the order for the stay of execution or any order to the contrary, be acted upon by the Court of first instance.";

(*b*) in sub-rule (*4*), for the words "Notwithstanding anything contained in sub-rule (*3*),", the words "Subject to the provision of sub-rule (*3*)," shall be substituted;

(*iv*) after sub-rule (*4*), the following sub-rule shall be inserted, namely:—

"(*5*) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish

the security specified in sub-rule (*3*) of rule 1, the Court shall not make an order staying the execution of the decree.";

(*v*) in rule 11, after sub-rule (*3*), the following sub-rule shall be inserted, namely:—

"(*4*) Where an Appellate Court, not being the High Court, dismisses an appeal under sub-rule (*1*), it shall deliver a judgment, recording in brief its grounds for doing so, and a decree shall be drawn up in accordance with the judgment.";

(*va*) after rule 11, the following rule shall be inserted, namely:—

"11A. Every appeal shall be heard under rule 11 as expeditiously as possible and endeavour shall be made to conclude such hearing within sixty days from the date on which the memorandum of appeal is filed.";

Time within which hearing under rule 11 should be concluded

* * * *

(*vi*) in rule 14, after sub-rule (*2*), the following sub-rules shall be inserted, namely:—

"(*3*) The notice to be served on the respondent shall be accompanied by a copy of the memorandum of appeal.

(*4*) Notwithstanding anything to the contrary contained in sub-rule (*1*), it shall not be necessary to serve notice of any proceeding incidental to an appeal on any respondent other than a person impleaded for the first time in the Appellate Court, unless he has appeared and filed an address for the service in the Court of first instance or has appeared in the appeal.

(*5*) Nothing in sub-rule (*4*) shall bar the respondent referred to in the appeal from defending it.";

(*vii*) in rule 17, in sub-rule (*1*), the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—Nothing in this sub-rule shall be construed as empowering the Court to dismiss the appeal on the merits.";

(*viii*) in rule 18, after the words "defray the cost of serving the notice", the words "or, if the notice is returned unserved, and it is found that the notice to the respondent has not been issued in consequence of the failure of the appellant to deposit, within any subsequent period fixed, the sum required to defray the cost of any further attempt to serve the notice," shall be inserted;

(*ix*) rule 20 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(*2*) No respondent shall be added under this rule, after the expiry of the period of limitation for appeal, unless the Court, for reasons to be recorded, allows that to be done, on such terms as to costs as it thinks fit.";

(*x*) in rule 22,—

(*a*) in sub-rule (*1*), for the words "on any of the grounds decided against him in the Court below, but take any cross-objection", the words "but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection" shall be substituted;

(*b*) in sub-rule (*1*), the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favour of that respondent.";

Remand in other cases.

(*xi*) after rule 23, the following rule shall be inserted, namely:—

"23A. Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the Appellate Court shall have the same powers as it has under rule 23.";

Order of remand to mention date of next hearing.

(*xii*) in rule 25, after the words "and the reasons therefor", the words "within such time as may be fixed by the Appellate Court or extended by it from time to time" shall be inserted;

(*xiii*) after rule 26, the following rule shall be inserted, namely:—

"26A. Where the Appellate Court remands a case under rule 23 or rule 23A, or frames issues and refers them for trial under rule 25, it shall fix a date for the appearance of the parties before the Court from whose decree the appeal was preferred for the purpose of receiving the directions of that Court as to further proceedings in the suit.";

(*xiv*) in rule 27, in sub-rule (*1*), after clause (*a*), the following clause shall be inserted, namely:—

"(*aa*) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or";

(*xv*) rule 30 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(*2*) Where a written judgment is to be pronounced, it shall be sufficient if the points for determination, the decision thereon and the final order passed in the appeal are read out and it shall not be necessary for the Court to read out the whole judgment, but a copy of the whole judgment shall be made available for the perusal of the parties or their pleaders immediately after the judgment is pronounced.";

(*xvi*) in rule 33, after the words "may not have filed any appeal or objection", the words "and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees" shall be inserted.

Amendment of Order XLII.

88. In the First Schedule, in Order XLII, after rule 1, the following rule shall be inserted, namely:—

Power of Court to direct that the appeal be heard on the question formulated by it.

"2. At the time of making an order under rule 11 of Order XLI for the hearing of a second appeal, the Court shall formulate the substantial question of law as required by section 100, and in doing so, the Court may direct that the second appeal be heard on the question so formulated and it shall not be open to the appellant to urge any other ground in the appeal without the leave of the Court, given in accordance with the provision of section 100.

Application of rule 14 of Order XLI.

3. Reference in sub-rule (*4*) of rule 14 of Order XLI to the Court of first instance shall, in the case of an appeal from an appellate decree or order, be construed as a reference to the Court to which the appeal was preferred from the original decree or order.".

Amendment of Order XLIII.

89. In the First Schedule, in Order XLIII,—

(*i*) in rule 1,—

(*a*) in clause (*a*), the words, figures and letter "except where the procedure specified in rule 10A of Order VII has been followed" shall be inserted at the end;

(*b*) clauses (*b*), (*e*), (*g*), (*h*), (*m*), (*o*) and (*v*) shall be omitted;

(*c*) after clause (*j*), the following clause shall be inserted, namely:—

"(*ja*) an order rejecting an application made under sub-rule (*1*) of rule 106 of Order XXI, provided that an order on the original application, that is to say, the application referred to in sub-rule (*1*) of rule 105 of that Order is appealable.";

(*d*) after clause (*n*), the following clause shall be inserted, namely:—

"(*na*) an order under rule 5 or rule 7 of Order XXXIII rejecting an application for permission to sue as an indigent person;";

(*e*) in clause (*r*), after the word and figure "rule 2", the word, figure and letter ", rule 2A" shall be inserted;

(*f*) in clause (*u*), after the figures "23", the words, figures and letter "or rule 23A" shall be inserted;

(*ii*) after rule 1, the following rule shall be inserted, namely:—

Right to challenge non-appealable orders in appeal against decrees.

"1A. (*1*) Where any order is made under this Code against a party and thereupon any judgment is pronounced against such party and a decree is drawn up, such party may, in an appeal against the decree, contend that such order should not have been made and the judgment should not have been pronounced.

(*2*) In an appeal against a decree passed in a suit after recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should, or should not, have been recorded.".

Amendment of Order XLIV.

90. In the First Schedule, in Order XLIV,—

(*i*) for the heading, the following heading shall be substituted, namely:—

"APPEALS BY INDIGENT PERSONS";

(*ii*) in rule 1,—

(*a*) in the marginal heading, for the words "as pauper", the words "as an indigent person" shall be substituted;

(*b*) in sub-rule (*1*), for the word "pauper" or "paupers", the words "indigent person" or "indigent persons" shall, as the case may be, be substituted;

(*c*) sub-rule (*2*) shall be omitted;

(*iii*) for rule 2, the following rules shall be substituted, namely:—

Grant of time for payment of Court-fee.

"2. Where an application is rejected under rule 1, the Court may, while rejecting the application, allow the applicant to pay the requisite Court-fee, within such time as may be fixed by the Court or extended by it from time to time; and upon such payment, the memorandum of appeal in respect of which such fee is payable shall have the same force and effect as if such fee had been paid in the first instance.

Inquiry as to whether applicant is an indigent person.

3. (*1*) Where an applicant, referred to in rule 1, was allowed to sue or appeal as an indigent person in the Court from whose decree the appeal is preferred, no further inquiry in respect of the question whether or not he is an indigent person shall be necessary if the applicant has made an affidavit stating that he has not ceased to be an indigent person since the date of the

decree appealed from; but if the Government Pleader or the respondent disputes the truth of the statement made in such affidavit, an inquiry into the question aforesaid shall be held by the Appellate Court, or, under the orders of the Appellate Court, by an officer of that Court.

(2) Where the applicant, referred to in rule 11, is alleged to have become an indigent person since the date of the decree appealed from, the inquiry into the question whether or not he is an indigent person shall be made by the Appellate Court or, under the orders of the Appellate Court, by an officer of that Court unless the Appellate Court considers it necessary in the circumstances of the case that the inquiry should be held by the Court from whose decision the appeal is preferred.".

Amendment of Order XLV.

91. In the First Schedule, in Order XLV, rule 2 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*), as so re-numbered, the following sub-rule shall be inserted, namely:—

"(*2*) Every petition under sub-rule (*1*) shall be heard as expeditiously as possible and endeavour shall be made to conclude the disposal of the petition within sixty days from the date on which the petition is presented to the Court under sub-rule (*1*).".

Amendment of Order XLVII.

92. In the First Schedule, in Order XLVII,—

(*i*) in rule 1, the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.";

(*ii*) in rule 7, for sub-rule (*1*), the following sub-rule shall be substituted, namely:—

"(*1*) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to at once by an appeal from the order granting the application or in an appeal from the decree or order finally passed or made in the suit.".

CHAPTER IV

AMENDMENT OF THE FORMS

Amendment of Appendix A.

93. In the First Schedule, in Appendix A, under the heading "(3) PLAINTS",—

(*i*) in Form No. 37, for paragraph 2, the following paragraph shall be substituted, namely:—

"*2. The plaintiff has obtained the leave of the Court for the institution of this suit.

*Not applicable where suit is instituted by the Advocate-General.";

(*ii*) in Form No. 45, in sub-paragraph (2) of paragraph 6, for the words "a decree for the balance", the words "an order for the balance" shall be substituted;

(*iii*) in Form No. 46, in paragraph 6, the words "together with mesne profits" shall be added at the end.

Amendment of Appendix B.

94. In the First Schedule, in Appendix B,—

(*i*) in Form No. 2, for the words "and you are directed to produce on that day all the documents upon which you intend to rely in support of your defence", the words "and further you are hereby directed to file on that day a written statement of your defence and to produce on the said day all documents in your possession or power upon which you base your defence or claim for set-off or counter-claim, and where you rely on any other document whether in your possession or power or not, as evidence in support of your defence or claim for set-off or counter-claim, you shall enter such documents in a list to be annexed to the written statement" shall be substituted;

(*ii*) for Form No. 4, the following Form shall be substituted, namely:—

"No. 4

SUMMONS IN A SUMMARY SUIT

(Order XXXVII, rule 2)

(*Title*)

To

[*Name, description and place of residence*]

WHEREAS has instituted a suit against you under Order XXXVII of the Code of Civil Procedure, 1908, for Rs. and interest, you are hereby summoned to cause an appearance to be entered for you, within ten days from the service hereof, in default whereof the plaintiff will be entitled, after the expiration of the said period of ten days, to obtain a decree for any sum not exceeding the sum of Rs. and the sum of Rs. for costs, together with such interest, if any, as the Court may order.

If you cause an appearance to be entered for you, the plaintiff will thereafter serve upon you a summons for judgment at the hearing of which you will be entitled to move the Court for leave to defend the suit.

Leave to defend may be obtained if you satisfy the Court by affidavit or otherwise that there is a defence to the suit on the merits or that it is reasonable that you should be allowed to defend.

Given under my hand and the seal of the Court, this day of 19

Judge

(*iii*) after Form No. 4, the following Form shall be inserted, namely:—

"No. 4A

SUMMONS FOR JUDGMENT IN A SUMMARY SUIT

(Order XXXVII, rule 3)

(*Title*)

In the Court, at Suit No. of 19

X Y Z *Plaintiff.*

Versus

A B C *Defendant.*

Upon reading the affidavit of the plaintiff the Court makes the following order, namely:—

Let all parties concerned attend the Court or Judge, as the case may be, on the day of 19 , at o'clock in the forenoon on the hearing of the application of the plaintiff that he be at liberty to obtain judgment in this suit against the defendant (or if against one or some or several, insert names) for Rs. and for interest and costs.

Dated the day of 19

* * * * *

95. In the First Schedule, in Appendix E,— Amendment of Appendix E.

(*i*) in Form No. 7, after the words "by assignment", the words "or without assignment" shall be inserted;

(*ii*) in Form No. 14, the word "annas" shall be omitted;

(*iii*) after Form No. 16, the following Form shall be inserted, namely:—

"No. 16A

AFFIDAVIT OF ASSETS TO BE MADE BY A JUDGMENT-DEBTOR

[Order XXI, rule 41(2)]

In the Court of

A.B...... *Decree-holder,*

Vs.

C..... *Judgment-debtor*

I of

oath

state on——————as follows:—

solemn affirmation

1. My full name is.....
(Block capitals)

2. I live at

*3. I am married

single

widower (widow)

divorced

4. The following persons are dependent upon me:—

5. My employment, trade or profession is that of carried on by me at

I am a director of the following companies:—

6. My present annual/monthly/weekly income, after paying income-tax, is as follows:—

(*a*) From my employment, trade or profession Rs.

(*b*) From other sources Rs.

*7. (*a*) I own the house in which I live; its value is Rs.

I pay as outgoings by way of rates, mortgage, interest etc., the annual sum of Rs.

(*b*) I pay as rent the annual sum of Rs.

8. I possess the following:—

(*a*) Banking accounts;
(*b*) Stocks and shares;
(*c*) Life and endowment policies;
(*d*) House property;
(*e*) Other property;
(*f*) Other securities;

} Give particulars.

9. The following debts are due to me:—

(give particulars)

(*a*) From of

Rs.

(*b*) From of

Rs. (etc.)

Sworn before me, etc.";

(*iv*) in Form No. 24, after the first paragraph, the following paragraph shall be inserted, namely:—

"It is also ordered that you should attend Court on the day of 19 , to take notice of the date fixed for settling the terms of the proclamation of sale.";

*Strike off the words which are not applicable.

(*v*) in Form No. 29, in the Schedule of Property, after the existing columns, the following columns shall be added, namely:—

"The value of the property as stated by the decree-holder.	The value of the property as stated by the judgment-debtor.".

Amendment of Appendix H.

96. In the First Schedule, in Appendix H,—

(*i*) after Form No. 2, the following Form shall be inserted, namely:—

"No. 2A

LIST OF WITNESSES PROPOSED TO BE CALLED BY PLAINTIFF/DEFENDANT

(Order XVI, rule 1)

Name of the party which proposes to call the witness	Name and address of the witness	Remarks";

(*ii*) for Form No. 11, the following Forms shall be substituted, namely:—

"No. 11

NOTICE TO CERTIFICATED, NATURAL, OR, *de facto* GUARDIAN

(Order XXXII, rule 3)

(*Title*)

To

(*Certificated/Natural/*de facto *Guardian*)

WHEREAS an application has been presented on the part of the plaintiff*/on behalf of the minor defendant* in the above suit for the appointment of a guardian for the suit for the minor defendant....., you (insert the name of the guardian appointed or declared by Court, or natural guardian, or the person in whose care the minor is) are hereby required to take notice that unless you appear before this Court on or before the day appointed for the hearing of the case and stated in the appended summons, and express your consent to act as guardian for the suit for the minor, the Court will proceed to appoint some other person to act as a guardian for the minor, for the purposes of the said suit.

Given under my hand and the seal of the Court, this day of 19 .

Juage.

No. 11A

NOTICE TO MINOR DEFENDANT

(Order XXXII, rule 3)

(*Title*)

To

Minor Defendant.

WHEREAS an application has been presented on the part of the plaintiff in the above suit for the appointment of *as guardian for the

*Strike off the words which are not applicable.

suit for you, the minor defendant, you are hereby required to take notice to appear in this Court in person on the day of 19 , at o'clock in the forenoon to show cause against the application, failing which the said application will be heard and determined *ex parte*.

Given under my hand and the seal of the Court, this day of 19

Judge.

CHAPTER V

REPEAL AND SAVINGS

Repeal and savings.

97. (*1*) Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except in so far as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.

(*2*) Notwithstanding that the provisions of this Act have come into force or the repeal under sub-section (*1*) has taken effect, and without prejudice to the generality of the provisions of section 6 of the General Clauses Act, 1897,— 10 of 1897.

(*a*) the amendment made to clause (*2*) of section 2 of the principal Act by section 3 of this Act shall not affect any appeal against the determination of any such question as is referred to in section 47 and every such appeal shall be dealt with as if the said section 3 had not come into force;

(*b*) the provisions of section 20 of the principal Act, as amended by section 7 of this Act, shall not apply to or affect any suit pending immediately before the commencement of the said section 7; and every such suit shall be tried as if the said section 7 had not come into force;

(*c*) the provisions of section 21 of the principal Act, as amended by section 8 of this Act, shall not apply to or affect any suit pending immediately before the commencement of the said section 8; and every such suit shall be tried as if the said section 8 had not come into force;

(*d*) the provisions of section 25 of the principal Act, as substituted by section 12 of this Act, shall not apply to or affect any suit, appeal or other proceeding wherein any report has been made under the provisions of section 25 before the commencement of the said section 11; and every such suit, appeal or other proceeding shall be dealt with as if the said section 11 had not come into force;

(*e*) the provisions of section 34 of the principal Act, as amended by section 13 of this Act, shall not affect the rate at which interest may be allowed on a decree in any suit instituted before the commencement of the said section 13 and interest on a decree passed in such suit shall be ordered in accordance with the provisions of section 34 as they stood before the commencement of the said section 13 as if the said section 13 had not come into force;

(*f*) the provisions of section 35A of the principal Act, as amended by section 14 of this Act, shall not apply to or affect any proceedings for revision, pending immediately before the commencement of the said section 14 and every such proceeding shall be dealt with and disposed of as if the said section 14 had not come into force;

(*g*) the provisions of section 60 of the principal Act, as amended by section 23 of this Act, shall not apply to any attachment made before the commencement of the said section 23;

(*h*) the amendment of section 80 of the principal Act by section 27 of this Act shall not apply to or affect any suit instituted before the commencement of the said section 27; and every such suit shall be dealt with as if section 80 had not been amended by the said section 27;

(*i*) the provisions of section 82 of the principal Act, as amended by section 28 of this Act, shall not apply to or affect any decree passed against the Union of India or a State or, as the case may be, a public officer, before the commencement of the said section 28 or to the execution of any such decree; and every such decree or execution shall be dealt with as if the said section 28 had not come into force;

(*j*) the provisions of section 91 of the principal Act, as amended by section 30 of this Act, shall not apply to or affect any suit, appeal or proceeding instituted or filed before the commencement of the said section 30; and every such suit, appeal or proceeding shall be disposed of as if the said section 30 had not come into force;

(*k*) the provisions of section 92 of the principal Act, as amended by section 31 of this Act, shall not apply to or affect any suit, appeal or proceeding instituted or filed before the commencement of the said section 31; and every such suit, appeal or proceeding shall be disposed of as if the said section 31 had not come into force;

(*l*) the provisions of section 96 of the principal Act, as amended by section 33 of this Act, shall not apply to or affect any appeal against the decree passed in any suit instituted before the commencement of the said section 33; and every such appeal shall be dealt with as if the said section 33 had not come into force;

(*m*) the provisions of section 100 of the principal Act, as substituted by section 37 of this Act, shall not apply to or affect any appeal from an appellate decree or order which had been admitted, before the commencement of the said section 37, after hearing under rule 11 of Order XLI; and every such admitted appeal shall be dealt with as if the said section 37 had not come into force;

(*n*) section 100A, as inserted in the principal Act by section 38 of this Act, shall not apply to or affect any appeal against the decision of a single Judge of a High Court under any Letters Patent which had been admitted before the commencement of the said section 38; and every such admitted appeal shall be disposed of as if the said section 38 had not come into force;

(*o*) the amendment of section 115 of the principal Act by section 43 of this Act shall not apply to or affect any proceeding for revision which had been admitted, after preliminary hearing, before the commencement of the said section 43; and every such proceeding for revision shall be disposed of as if the said section 43 had not come into force;

(*p*) the provisions of section 141 of the principal Act, as amended by section 47 of this Act, shall not apply to or affect any proceeding which is pending immediately before the commencement of the said section 47; and every such proceeding shall be dealt with as if the said section 47 had not come into force;

(*q*) the provisions of rules 31, 32, 48A, 57 to 59, 90 and 97 to 103 of Order XXI of the First Schedule as amended or, as the case may be, substituted or inserted by section 72 of this Act shall not apply to or affect—

(*i*) any attachment subsisting immediately before the commencement of the said section 72, or

(*ii*) any suit instituted before such commencement under rule 63 aforesaid to establish right to attached property or under rule 103 aforesaid to establish possession, or

(*iii*) any proceeding to set aside the sale of any immovable property,

and every such attachment, suit or proceeding shall be continued as if the said section 72 had not come into force;

(*r*) the provisions of rule 4 of Order XXII of the First Schedule, as substituted by section 73 of this Act, shall not apply to any order of abatement made before the commencement of the said section 73;

(*s*) the amendment, as well as substitution, made in Order XXIII of the First Schedule by section 74 of this Act shall not apply to any suit or proceeding pending before the commencement of the said section 74;

(*t*) the provisions of rules 5A and 5B of Order XXVII, as inserted by section 76 of this Act, shall not apply to any suit, pending immediately before the commencement of the said section 76 against the Government or any public officer; and every such suit shall be dealt with as if the said section 76 had not come into force;

(*u*) the provisions of rules 1A, 2A and 3 of Order XXVIIA, as inserted or substituted, as the case may be, by section 77 of this Act shall not apply to or affect any suit which is pending before the commencement of the said section 77;

(*v*) rules 2A, 3A and 15 of Order XXXII of the First Schedule, as amended, or as the case may be, substituted by section 79 of this Act, shall not apply to a suit pending at the commencement of the said section 79; and every such suit shall be dealt with and disposed of as if the said section 79 had not come into force;

(*w*) the provisions of Order XXXIII of the First Schedule, as amended by section 81 of this Act, shall not apply to or affect any suit or proceeding pending before the commencement of the said section 81 for permission to sue as a pauper; and every such suit or proceeding shall be dealt with and disposed of as if the said section 81 had not come into force;

(*x*) the provisions of Order XXXVII of the First Schedule, as amended by section 84 of this Act, shall not apply to any suit pending before the commencement of the said section 84; and every such suit shall be dealt with and disposed of as if the said section 84 had not come into force;

(*y*) the provisions of Order XXXIX of the First Schedule, as amended by section 86 of this Act, shall not apply to or affect any injunction subsisting immediately before the commencement of the said section 86; and every such injunction and proceeding for disobedience of such injunction shall be dealt with as if the said section 86 had not come into force;

(*z*) the provisions of Order XLI of the First Schedule, as amended by section 87 of this Act, shall not apply to or affect any appeal pending immediately before the commencement of the said section 87; and every such appeal shall be disposed of as if the said section 87 had not come into force;

(*za*) the provisions of Order XLII of the First Schedule, as amended by section 88 of this Act, shall not apply to or affect any appeal from an appellate decree or order which had been admitted, before the commencement of the said section 88, after hearing under rule 11 of Order XLI; and every such admitted appeal shall be dealt with as if the said section 88 had not come into force;

(*zb*) the provisions of Order XLIII of the First Schedule, as amended by section 89 of this Act, shall not apply to any appeal against any order pending immediately before the commencement of the said section 89; and every such appeal shall be disposed of as if the said section 89 had not come into force.

CHAPTER VI

AMENDMENT OF THE LIMITATION ACT, 1963

98. In the Limitation Act, 1963, in the Schedule, in the entry in the second column, against article 127, for the words "Thirty days", the words "Sixty days" shall be substituted. Amendment of Schedule of Act 36 of 1963.

S. L. SHAKDHER,
Secretary-General.

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